United States Court of Appeals

for the Second Circuit

APPENDIX

76-5025

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In the Matter of The New York, New Haven And Hartford Railroad Company, Debtor

On Appeal From The United States District Court For The District Of Connecticut Honorable Robert P. Anderson, Circuit Judge Sitting By Designation

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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Relevant Docket Entries

3164 August 11, 1970. Order for Hearing on Form of Order on Remand for Further Proceedings in the New Haven Inclusion Cases, filed and entered. All parties to said causes and these proceedings, which warrants their being heard, will be heard on August 25, 1970, at 10:30 A.M., Trustee shall give notice of said hearing by mailing a copy of this order to each of the parties to the aforementioned causes, etc., Trustee and any other person desiring to be heard shall file written statements; Trustee shall file a statement not later than August 18, 1970, and other persons desiring to file a statement shall file same, in duplicate, with the Clerk of this Court at New Haven, no later than August 24, 1970. Anderson, J. m-8/11/70. Copies mailed.

3166 August 17, 1970. Statement of Position of Trustee Pursuant to Order Dated August 10, 1970 of the Reorganization Court, filed. (Sent by this office to RPA) Copy in file.

3174 August 21, 1970. Statement of Position of the State of Connecticut, filed. (Original mailed by this office to RPA).

3175 August 24, 1970. Statement of Position of the United States on Form of Order of Remand to the Interstate Commerce Commission, filed.

3176 August 24, 1970. Position of United States Trust Company of New York, As Trustee, Under Harlem River Division Indenture on Form of Order on Remand, filed.

3177 August 24, 1970. Statement of Position of the Fidelity Bank and Joseph F. McDonald, Indenture Trustees, Pursuant to Order Dated August 10, 1970 of the Reorganization Court, filed.

3178 August 24, 1970. Statement of Position of Manufacturers Hanover Trust Company as Trustee Under The First and Refunding Mortgage of the New York, New Haven and Hartford Railroad Company Pursuant to Order Dated August 10, 1970, filed.

3179 August 24, 1970. Statement of Position of Metropolitan Transportation Authority Pursuant to Order Dated August 10, 1970 of the Reorganization Court, filed.

Relevant Docket Entries

3180 August 24, 1970. Statement of Position of Manufacturers Hanover Trust Company, as Trustee Under the New York Central and Hudson River Railroad Company Gold Bond Mortgage of 1897, Pursuant to Order Dated August 10, 1970 of the Reorganization Court, filed.

3181 August 24, 1970. Statement of Position of New York, New Haven and Hartford Railroad Company Fist Mortgage Bondholders Committee Pursuant to Order Dated August 10, 1970, filed.

3182 August 24, 1970. Statement of Position of Reorganization Managers of the Boston and Providence Railroad Corporation Pursuant to Order Dated August 10, 1970, filed.

3183 August 24, 1970. Statement of Position of The Chase Manhattan Bank, N.A. as Trustee under the Debtor's General Income Mortgage, Pursuant to Order of this Court dated August 10, 1970, filed.

3195 September 17, 1970. Court Reporter's Transcript of proceedings of August 25, 1970, filed. (Russell, R.)

3200 September 25, 1970. Statement of Position of the Interstate Commerce Commission, filed in duplicate (copy sent RPA). Copies mailed ICC, Treas. Transp. & Just. Depts. Atty. Kane and Ropes & Gray.

3205 October 20, 1970. Statement of Position of Penn Central Transportation Company Trustees Pursuant to Order Dated August 10, 1970 of the Reorganization Court, filed. (Copy to RPA) Copies mailed ICC, Treas., Transp. & Just. Depts. Atty. Kane and Ropes & Gray.

3212 November 9, 1970. Rebuttal Statement of the Chase Manhattan Bank, N.A. As Trustee Under the Debtor's General Income Mortgage, Submitted With Respect to Order of this Court dated August 10, 1970, filed. (Copy sent Judge Anderson).

3213 November 10, 1970. Supplement to Statement of Position of New Haven Trustee Responding to Statements of Position of the Interstate Commerce Commission and Penn Central Transportation Company Trustees, filed. (Copy sent Judge Anderson.)

Relevant Docket Entries

3214 November 10, 1970. Response of Manufacturers Hanover Trust Company, As Trustee of the First and Refunding Mortgage of the New York, New Haven and Hartford Railroad Company, Debtor, to the Statements of Position Filed by the Interstate Commerce Commission, Manufacturer's Hanover Trust Company, As Trustee Under the New York Central and Hudson River Railroad Company Gold Bond Mortgage of 1897, and the Reorganization Trustees of Penn Central Transportation Company, filed. (Copy sent Judge Anderson).

3215 November 10, 1970. Rebuttal Statement of New York, New Haven and Hartford Railroad Company First Mortgage 4% Bondholders Committee, filed. (Copy sent to Judge Anderson).

3252 December 23, 1970. Court Reporter's Transcript of proceedings of November 18, 1970, filed. (Sanders, Gale & Russell, R.).

3254 January 4, 1971. Brief on Behalf of The Chase Manhattan Bank (N.A.) as Trustee, Concerning the Statements of Position, filed. (Copy to RPA)

3255 January 4, 1971. Memorandum of Manufacturers Hanover Trust Company, As Trustee of the First and Refunding Mortgage of the Debtor with Respect to the Remand Order, filed. (Copy to RPA)

3256 January 4, 1976. Copy of Opposition of the Interstate Commerce Commission to the Motion For an Order Remanding the Appeals, filed in the U.S. Court of Appeals for the Second Circuit, filed.

3258 January 4, 1971. Brief on Behalf of Richard Joyce Smith, Trustee of the Property of the New York, New Haven and Hartford Railroad Company, Debtor, filed. (Copy to RPA).

3259 January 4, 1971. Brief of the Trustees of the Penn Central Transporation Comapny, filed. (Copy to RPA) Copies mailed ICC, Treas., Just. & Transp. Depts. Atty. Kane and Ropes & Gray, 1/20/71.

Relevant Docket Entries

3267 January 26, 1971. Reply Brief on Behalf of the Chase Manhattan Bank as Trustee, in Respect of Penn Central Main Brief Supporting its Statement of Position, filed. (Copy to RPA)

3268 January 26, 1971. Reply Brief of the State of Connecticut, filed. re: Further Proceedings in the New Haven Inclusion Cases Pursuant to 8/10/70 Order of This Court. (Copy to RPA) Receipt sent Mr. Kanell.

3269 January 27, 1971. Reply Memorandum on Behalf of Manufacturers Hanover Trust Company, As Trustee of The First and Refunding Mortgage of The New York, New Haven & Hartford Railroad Company, filed. (Copy to RPA)

3270 January 27, 1971. Reply Brief on Behalf of the First Mortgage 4% Bondholders Comitteee, filed. (Copy to RPA)

3271 January 27, 1971. Reply Brief of the Trustees of the Penn Central Transportation Company, filed. (Copy to RPA)

3362 June 25, 1971. Petition of Manufacturers Hanover Trust Company and A. Frederick Keuthen to Resign as Corporate Trustee and Individual Trustee, Respectively, under the First and Refunding Mortgage of the Debtor and For the Appointment of a Successor Trustee or Trustees, filed. Noticed for hearing on July 29, 1971 at 10:30 A.M. Anderson, J. m-6/25/71.

3376 July 29, 1971. Hearing held on Petition of Manufacturers Hanover Trust Co. and A. Frederick Keuthen to Resign as Corporate Trustee and Individual Trustee, Respective, Under the First and Refunding Mortgage of the Debtor and for the Appointment of A Successor Trustee or Trustees. Affidavit of Giving Notice of Hearing on Petition for Order no.648 and Petition of Manufacturers Hanover Trust Co., filed. Court finds that due and adequate notice was given. Notice of Publication in New Haven Journal Courier, filed. Notice of Publication in Wall Street Journal, filed. Court finds that due and adequate notice was given. One witness for petitioner sworn and testified. Petition is granted. Lawrence W. Iannotti, Esq., is appointed by the Court as successor trustee. Bond fixed at $10,000.00, with surety. Anderson, J. m-7/29/71. (Order No. 650).

Relevant Docket Entries

3387 July 29, 1971. Notice of Appeal, filed by Manufacturers Hanover Trust Co., as Trustee under the New York Central and Hudson River Railroad Co. Gold Bond Mortgage dated 6/1/1897, from Order of Remand on Judgment of Supreme Court dated 6/22/71. Copies mailed to Attorneys for Manufacturers Hanover Trust: Prof. Moore; Judge Anderson; Trustees for Penn Central Co. and Attorney General for State of Conn.

3398 September 2, 1971. Court Reporter's Transcript of Proceedings held on July 29, 1971, filed. (Gale, R.)

3470 March 2, 1972. Order Approving Account of Manufacturers Hanover Trust Co. and A. Frederick Keuthen, as Corporate Trustee and Individual Trustee, under the First and Refunding Mortgage of the Debtor, filed and entered. (For period 7/7/61 to 10/26/71). Anderson, J. m-3/2/72. (Order No. 661-A)

3807 June 16, 1975. Petition of Manufacturers Hanover Trust Company, as Corporate Trustee, and A. Frederick Keuthen, as Successor Individual Trustee for an Allowance for Expenses Incurred from July 7, 1961 to August 30, 1971 and for Compensation for Services Rendered from July 7, 1961 to August 30, 1971 in Connection with these Proceedings Together with Supporting Affidavits, Annexes and Appendices, filed. Petition for Order #809.

3835 August 21, 1975. Opinion and Order on Applications for Compensation for Services Rendered and Expenses Incurred on Behalf of the Bankrupt Estate, filed and entered. Clerk shall transmit to ICC certified copies of the fee applications for allowance and compensation and reimbursement of expenses and thereafter ICC will make a finding of fact. This Court reserves jurisdiction to consider and pass upon the allowances of compensation to petitioners for services rendered and of reimbursement of expenses, from July 7, 1961 to the date of said petitions, upon receipt by this Court of the findings of fact of said ICC including its report approving said maximum limits of allowance for compensation and reimbursement of expenses. Anderson, J. m-8/21/75. Certified copy mailed to ICC, together with certified copies of all petitions for allowance filed to date (with 19 additional copies of each petition). Also copies of Opinion mailed to Prof. Moore, Atty. Migdal, Atty. McAfee, Dewey, Ballantine, Bushby, Palmer & Wood, Atty. Iannotti, Atty. Auerbach, Atty. Zeldes, Atty. Bader of Manufacturers Hanover Trust Co. and Atty. Lander. Copies also mailed to Treas., Transp., Just. Depts.

Relevant Docket Entries

3899	March 18, 1976. Notice of Manufacturers Hanover Trust Co., as Corporate Trustee and A. Frederick Keuthen, as Successor Individual Trustee, Under First and Refunding Mortgage of the Debtor, requesting hearing date for application filed June 16, 1975.
3938	May 7, 1976. Statement of Position of Trustee of the Debtor Concerning Petitions for Allowance Under Sec. 77(c)(12), filed.
3940	May 7, 1976. Answer of Trustee of the Debtor to Petition of Manufacturers Hanover Trust Co. as Corporate Trustee, and A. Frederick Keuthen, as Successor Individual Trustee, for an Allowance for Expenses Incurred from 7/7/61 to 8/30/71 in Connection with These Proceedings Together with Supporting Affidavits, Annexes and Appendices, filed.
3947	May 14, 1976. Reply of Manufacturers Hanover Trust Company, filed.
--	May 18, 1976. Hearing held on Pet. of U.S. Trust Co. of N.Y. as Trustee, etc., and Pet. of Manufacturers Hanover Trust Co. as Corporate Trustee, etc. One witness sworn for Petitioner's Hanover Mfg. Trust. Oral motion of ICC to Stay Petitions, denied. Decision reserved on both petitions. Anderson, J. m-5/19/76.
3957	June 1, 1976. Statement of Position of Jacob D. Zeldes, Successor Indenture Trustee Under the Debtor's General Income Mortgage Concerning Petitions for Allowances Under Sec. 77 (c)(12), filed. Copies mailed to ICC, Treas., Transp. & Just. Depts.
3958	June 2, 1976. Court Reporter's Transcript of Proceedings held on May 18, 1976, filed. (Beecher, R.)
3959	June 4, 1976. Supplemental Reply of Manufacturers Hanover Trust Company, filed. Copies mailed to ICC, Treas., Transp. & Just. Depts.
3970	June 30, 1976. Opinion and Order on Applications, Pursuant to Section 77(c)(12) of the Bankruptcy Act, for Compensation and for Reimbursement of Expenses Incurred on Behalf of the Bankrupt Estate, filed and entered. Anderson, J. m-7/1/76.

Relevant Docket Entries

3971 June 30, 1976. Judgment on Opinion and Order on Applications, filed and entered. Anderson, J. m-7/1/76. Copies of Opinion and Judgment mailed to Prof.Moore, ICC, all fee applicants 4 District Court Judges, Bureau of Nat'l Affairs, West Publishing. Atty. Blanchette for Penn Central, Atty. Broadley for Dept. of Justice, Dept. of Transp.

3984 July 29, 1976. Notice of Appeal from Final Order and Judgment of June 30, 1976, filed by Manufacturers Hanover Trust Company. Copy of Notice of Appeal and docket entries mailed to U.S. Court of Appeals, 2nd Cir.

3985 August 2, 1976. Petition for Clarification of Opinion, filed by Manufacturers Hanover Trust Co., the former Trustee of the First and Refunding Mortgage of the Debtor, Noticed for Hearing at New London on August 16, 1976 at 11:00 A.M. Anderson, J. m-8/2/76.

3987 August 10, 1976. Notice of Cross-Appeal from portion of Opinion of June 30, 1976 and Judgment of same date, filed by Atty. Zeldes, Successor Indenture Trustee Under the Debtor's General Income Mortgage dated 7/1/47. Copies mailed to ICC, Treas., Trans. & Just. Dept. One certified copy of docket entries and Notice of Appeal mailed to U.S. Court of Appeals.

3988 August 10, 1976. Objection of Jacob D. Zeldes, Successor Indenture Trustee to Petition of Manufacturers Hanover Trust Co. for Clarification of Opinion, filed. Copies mailed to ICC, Treas., Transp. & Just. Depts.

3991 August 12, 1976. Answer to Petition for Clarification of Opinion, filed by Trustee of Debtor. Copies mailed to ICC, Treas., Transp. & Just. Depts.

3992 August 12, 1976. Amended Certificate of Service of cross-appeal, filed by Atty. Zeldes, Successor Indenture Trustee, etc.

3994 August 16, 1976. Hearing held on Petition of Manufacturers Hanover Trust Co. for Clarification of Opinion. (Hearing held in New London with Court Reporter and Deputy Clerk present.) Certificate of Service on Pet. of Hanover Trust for Clarification, filed. Court finds that due and adequate notice has been given. Decision Reserved. Court puts on record amendments or corrections to Opinion of June 30, 1976. Anderson, J. m-8/16/76

Relevant Docket Entries

3999	August 23, 1976. Order Supplementing and Clarifying This Court's Opinion of June 30, 1976, filed and entered. The Court retains and continues to retain jurisdiction over the issues in this case and affirms its judgment of June 30, 1976, discussed herein. It is so Ordered. Anderson, J. m-8/23/76. Copies mailed to parties on mailing list.
4001	August 23, 1976. Notice of Cross-Appeal from Opinion and Judgment of 6/30/76, filed by Lawrence W. Iannotti, Successor Trustee Under the N.Y., N.H. & Htfd. R.R. Company's First and Refunding Mortgage Dated as of July 1, 1947. Certified copy of same and docket entries mailed to Clerk, U.S. Court of Appeals, 2nd Cir.
4004	September 20, 1976. Court Reporter's Transcript of Proceedings held on August 16, 1976, filed. (Russell).
4011	October 21, 1976. Statement of Assets, Liabilities and Capital Deficit as of the Close of Business on September 30, 1976, and Summary Statement of Operations for September 30, 1976, filed.

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

No. 30226

ORDER FOR HEARING ON FORM OF ORDER ON REMAND FOR FURTHER PROCEEDINGS IN THE NEW HAVEN INCLUSION CASES

Judgment of the Supreme Court of the United States in the *New Haven Inclusion Cases* (Nos. 914, 916, 920, 1038 and 1057, October Term, 1969) having been filed in this Court on July 31, 1970; and

It having been ordered and adjudged therein that the judgment of this Court in the foregoing causes be affirmed in part and vacated in part; and the same having been remanded to this Court for further proceedings in conformity with the opinion dated June 29, 1970 of the Supreme Court; it is hereby

ORDERED that:

1. All parties to said causes and these proceedings, and all other persons who satisfy this Court that they have an interest in the proceedings which warrants their being heard will be heard on August 25, 1970 at 10:30 o'clock a.m., or as soon thereafter as the Court can hear them, at the United States Court House,

New Haven, Connecticut, with respect to the form of order which should be entered by this Court in carrying out said opinion of the Supreme Court of the United States.

2. Richard Joyce Smith, Trustee of the New Haven, shall give notice of said hearing by mailing a copy of this order to each of the parties to the aforementioned causes, to all other persons customarily notified of hearings in these proceedings and to the Trustees of Penn Central Transportation Company, debtor, and by causing a copy of this order to be published twice, with the last publication not later than August 21, 1970, in the New Haven Journal Courier, a newspaper published in the City of New Haven, State of Connecticut, in the Hartford Daily Courant, a newspaper published in the City of Hartford, State of Connecticut, in the Boston Herald Traveler, a newspaper published in the City of Boston, State of Massachusetts, in The Providence Journal, a newspaper published in the City of Providence, State of Rhode Island, and in The Wall Street Journal, a newspaper published in the City of New York, State of New York.

3. The Trustee of the New Haven, and any other person desiring to be heard shall file written statements of position which, among any other matters deemed relevant to the hearing, shall be addressed specifically to each of the following subjects (or state with respect to any such subject that no position is being taken):

A. Whether and, if so, to what extent, this Court should modify its prior orders with respect to Step II of the plan of reorganization for the New Haven heretofore approved by the Interstate Commerce Commission and this Court, as a result of said opinion of the Supreme Court.

B. Whether this Court should indicate to the Interstate Commerce Commission specific views or recommendations with respect to the proceedings to be conducted by the Interstate Commerce Commission in its further proceedings in the premises, and, if so, what such views or recommendations should be.

C. Whether this Court may order an equitable lien on or otherwise subject the assets conveyed to the present Penn Central Transportation Company on December 31, 1968 by the then Trustees of the New Haven to a first security interest in favor of the New Haven and, if so, whether such an order should be entered and what its terms should be in conformity with said opinion of the Supreme Court.

D. Whether this Court may order the trustee of the indenture securing the Divisional First Mortgage Bonds issued by the present Penn Central Transportation Company to the then Trustees of New Haven, in part consideration for the assets of the New Haven conveyed on December 31, 1968, or order the Trustees of Penn Central Transportation Company, to pay over or cause to be paid over to the Trustee of the New Haven all proceeds from the sale of mortgaged property now on deposit with such indenture trustee, all future proceeds remaining to be paid with respect to sales of mortgaged property heretofore made, and all proceeds of mortgaged property hereafter sold, leased or otherwise divested by the Trustees of Penn Central Transportation Company and, if so, whether such an order should be entered and what its terms should be in conformity with said opinion of the Supreme Court.

E. Whether this Court may order the Trustees of Penn Central Transportation Company to pay over to the Trustee of the New Haven, periodically as may be determined pending resolution by the Interstate Commerce Commission and judicial review of the issues remanded by the Supreme Court, of an amount equal to half the excess income from the Grand Central Terminal properties and, if so, whether such an order should be entered and what its terms should be in conformity with said opinion of the Supreme Court.

F. Whether this Court may order the Trustees of Penn Central Transportation Company and the Trustee of the New Haven to carry out as soon as possible the plan of reorganization of the Boston and Providence Railroad

Corporation and, if so, whether such an order should be entered and what its terms should be in conformity with said opinion of the Supreme Court.

4. The Trustee of the New Haven shall file a statement of posiiton with respect to the foregoing matters with this Court not later than August 18, 1970, and mail a copy of the same to each of the parties to the aforementioned causes, to all other persons customarily notified of hearings in these proceedings, to the Trustees of Penn Central Transportation Company, and to any other person requesting it. All other persons desiring to file a statement of position shall file the same, in duplicate, with the Clerk of this Court, United States Court House, New Haven, Connecticut 06508 as soon as possible, but in no event later than August 24, 1970.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation

Dated August 10, 1970

UNITED STATES DISTRICT COURT

District of Connecticut

In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	No. 30226

STATEMENT OF POSITION OF TRUSTEE
PURSUANT TO ORDER DATED
AUGUST 10, 1970 OF THE
REORGANIZATION COURT

Richard Joyce Smith, Trustee of the property of the Debtor, submits this statement of position in accordance with paragraph 4 of the Order for Hearing on Form of Order on Remand for Further Proceedings in the New Haven Inclusion Cases, entered by this Court on August 10, 1970.

1. With respect to the subject set forth in paragraph 3A of said Order of August 10, 1970:

In its order herein dated July 28, 1969, this Court provided that the plan of reorganization for the Debtor as set forth in the Interstate Commerce Commission's Fourth Supplemental Report, dated November 25, 1968 (334 I.C.C. 25), be remanded to the Commission to be held by it until the issue of price to be paid by Penn Central is finally determined. This Court specifically provided as follows:

> "When the price is finally determined, the Commission may reconsider the Plan vis-a-vis the two system mortgages and other interested parties, to determine how the additional consideration, if any, is to be paid and whether this or a reduction in the price will require a modification in the structure of the Plan."

Subject to the findings and conclusions expressed by this Court, and its said order, the Commission was further authorized and directed by said order to implement the Plan to the end "that the Plan as revised will in all respects be fair, equitable and feasible."

The Trustee considers, under these circumstances, that it is unnecessary at this time for this Court to modify its prior orders with respect to Step II of the Plan as a result of the opinion of the Supreme Court in the New Haven Inclusion Cases, _____ U. S. _____ (June 29, 1970) (Nos. 914, 916, 920, 1038, 1057, October term, 1969).

2. With respect to the subject set forth in paragraph 3B of said Order of August 10, 1970:

The Trustee considers that it would be appropriate for this Court to state its views as to the intent of the Supreme Court with respect to the further proceedings before the Commission and the Court under Section 77 of the Bankruptcy Act (New Haven Inclusion Cases, slip opinion at p. 98). This would permit the

Commission to have the benefit of this Court's views as to the questions of law which this Court considers it will have under consideration in its subsequent review of the Commission's further orders in the premises, and could substantially shorten the proceedings without prejudice to any person.

To such end, the Trustee requests that this Court state in its order of remand to the Commission that it considers the opinion of the Supreme Court in the New Haven Inclusion Cases, supra, to require that the further proceedings before the Commission and this Court shall: "determine the form that Penn Central's consideration to New Haven should properly take and the status of the New Haven estate as a shareholder or creditor of Penn Central" (Id., at 92); make a "reassessment of the consideration that Penn Central is to give in exchange" for the New Haven's assets (Ibid.); take into consideration that Penn Central is not required to make "immediate payment in full" (Id., at 91); and recognize that fairness and equity will not permit "approval of a payment for the transferred New Haven properties that may be worth only a fraction of its purported value" (Ibid.).

The Trustee requests that this Court further state in its order of remand to the Commission that all of the consideration heretofore received by the Trustee from Penn Central (other than cash, cancellation of indebtedness issued by the Trustee, or previous assumption by Penn Central of obligations of the New Haven estate which are hereafter expressly assumed by the Penn Central Trustees) is subject to modification, cancellation or return; and that the Commission should seek to devise a form of consideration to be paid by Penn Central which would permit completion and

termination of the reorganization of the New Haven without awaiting completion of the reorganization of Penn Central.

The Trustee requests that this Court state, in conformity with the opinion of the Supreme Court: that the total consideration to be paid by Penn Central for the New Haven's assets conveyed on December 31, 1968, plus $5,000,000 for a share of the New Haven's operating losses in 1968, is $174,635,899; that subject to express assumption by the Penn Central Trustees of the obligations heretofore assumed by Penn Central on December 31, 1968, the total cash, cancellation of indebtedness and assumption of obligations from which the New Haven estate has benefited shall be taken at $32,871,180*; and that the amount due and unpaid for the properties conveyed to Penn Central on December 31, 1968 and used by it in the conduct of its business since that date is $141,764,719.

The Trustee considers that it would be appropriate for him in his capacity as Trustee to recommend to the Commission the nature of the proceedings which would be appropriate in order to carry out this Court's remand. For such purpose, the Trustee intends, unless otherwise instructed by this Court, to file with the Commission promptly after entry by this Court of its order of remand, a petition which prays the Commission to enter an order or orders substantially as follows:

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* Based upon the values assigned thereto by the Commission in its Fourth Supplemental Report (334 I.C.C. at p. 71), plus cash in the amount of $54,450 received by the Trustee under the Fifth Supplemental Report (334 I.C.C. 528), less $483,270 which is the amount of the discount found in the Fifth Supplemental Report (334 I.C.C. at p. 530) that is to be deducted in determining the value of Penn Central's assumption of the New Haven's Harlem River Division Bonds.

A 1 :

A. Fixing a date for a pre-trial conference of all parties and other interested persons, allowing 90 days for such purpose, to determine procedures to carry out the order of remand;

B. Fixing an appropriate date for hearing following such pre-trial conference, and establishing procedures; and

C. Requiring any party wishing to submit evidence as to the issues on remand to file with the Commission at a suitable time (e.g., 30 days) before the pre-trial conference a detailed statement of its proposals for compliance with the opinion of the Supreme Court in the New Haven Inclusion Cases, together with a description of the evidence intended to be adduced in support of such proposals, the witnesses through whom such evidence is intended to be presented and the time deemed necessary for preparation of its case.

The Trustee presently intends (subject to appropriate modification or additions in connection with his subsequent detailed analyses and preparation) to submit to the Commission proposals and evidence on two alternative methods of compliance with the Supreme Court's opinion, essentially as follows:

A. First Alternative. The Penn Central Trustees would receive credits against the consideration required to be paid to the New Haven in the amounts of $32,871,180 as aforesaid, and further credit equal to an appropriate market valuation of the $34,025,800 principal amount of Penn Central 5% Divisional First Mortgage Bonds due January 1, 1994 presently held by the Trustee. The balance of the consideration would be paid by conveyance of real estate not required

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for operations of Penn Central (as confirmed by the Commission), and the Trustee would return all shares of Penn Central stock now held by him. The real estate would be conveyed to the Trustee free and clear of all liens and other encumbrances and would be valued at the fair market values (before costs of liquidation) presently in the record as heretofore found by the Commission, and approved by this Court and the Supreme Court; provided, however, that such properties subject to the lien of the former New Haven Harlem River Division mortgage or the proposed liens in favor of the United States or the holders of certificates of contingent beneficial interest in connection with the reorganization of Boston and Providence Railroad Corporation may be conveyed subject to such liens so long as the value of the property so conveyed is adjusted accordingly. The property to be conveyed would be selected from real estate conveyed to Penn Central by the Trustee on December 31, 1968* and real estate subject to the Grand Central Terminal agreements in which the New Haven released its interest on December 31, 1968. The Trustee would negotiate with the Penn Central Trustees as to the specific parcels of real estate to be included in such conveyance and, failing agreement, would make recommendations to the Commission for its determination.

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* For the purposes of these proposals, the properties and franchises of Boston and Providence Railroad Corporation are deemed to have been transferred to Penn Central on December 31, 1968.

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B. Second Alternative. The Penn Central Trustees would receive a credit against the consideration required to be paid to the New Haven in the amount of $32,871,180 as aforesaid. The balance of $141,764,719 would be paid by an issuance of Penn Central Trustees' Certificates. The Penn Central Trustees' Certificates would bear interest at current bank rates which would be required to be paid currently only to the extent of, and by reason of the New Haven's rights to, one-half the excess income received by the Penn Central Trustees from the Grand Central Terminal properties and any other income received by the Penn Central Trustees from the New Haven properties conveyed to Penn Central on December 31, 1968. The proceeds of sale of any of such assets heretofore made by Penn Central or hereafter made by the Penn Central Trustees would be paid over to the New Haven Trustee against an equivalent reduction in principal amount of Penn Central Trustees' Certificates. For this purpose, long-term leases of such assets would be valued on a capitalized basis and treated in the same fashion as sales.

The New Haven Trustee would return to the Penn Central Trustees all of the $34,025,800 principal amount of 5% Divisional First Mortgage Bonds presently held by him. He would retain the 956,576 shares of Penn Central common stock now held by him subject to the following conditions:

(i) the stock would be returned upon payment in full of the Penn Central Trustees' Certificates;

(ii) the stock, or any part thereof, at the election of the New Haven Trustee could be applied against

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Penn Central Trustees' Certificates then held by him, such credit to be at the rate of $87.50 per share; and

(iii) any shares of Penn Central stock held by the Trustee, not credited against Trustees' Certificates as provided in clause (ii), at the effective date of a plan of reorganization for Penn Central which shall have been approved and confirmed by final votes and orders, shall be applied as a credit against outstanding Penn Central Trustees' Certificates in the manner and to the extent provided in said plan of reorganization.

After entry of appropriate orders approving either of such proposals or other means of carrying out the decision of the Supreme Court in the New Haven Inclusion Cases, the Trustee will make recommendations for the amendment of Step II of the plan of reorganization for the New Haven consistent with the prior orders of this Court and the nature of the consideration received from the Trustees of Penn Central.

3. With respect to the subject set forth in paragraph 3C of said order of August 10, 1970:

The Supreme Court affirmed this Court's views as to the requirement that the Plan give absolute assurance that the value of the consideration received by the New Haven from Penn Central for its assets be the fair equivalent of the value found for such assets. The impact of the institution of the Penn Central reorganization upon the method selected to achieve such assurance introduced a wholly new element, however, which affects the determination of

what may be required by fairness and equity. As stated by the Supreme Court (Id., at p. 91):

> "On the basis of the record before the District Court at the time of its order, we would have no hesitancy in accepting its findings, conclusions, and proposed underwriting plan as consistent with the history of the reorganization proceedings and supported by substantial evidence. But we cannot avoid the impact of recent events in assessing the propriety of the decree that that court has entered. See United States v. Aluminum Co. of America, 148 F. 2d 416, 445. And those events make it possible that this aspect of the reorganization court's decree may be wholly unrealistic."

In order to give effect both to this Court's intention in approving the conveyance of the New Haven assets on December 31, 1968 as a first step in the New Haven's reorganization, and the significance which the Supreme Court has attached to the impact of the Penn Central reorganization upon the determination of fairness and equity, it is submitted that this Court should now expressly find and declare that an equitable lien attached to the properties, assets and rights conveyed by the Trustee to Penn Central at the time of conveyance and, based upon the final determination by the Supreme Court of the value of those assets and the price required to be paid therefor, find and declare a judgment lien on all such properties, assets and rights. This would serve to insure the ultimate receipt by the New Haven of the purchase price found by the Supreme Court to be required to be paid on all property conveyed to Penn Central on December 31, 1968, and to insure in the interim that the proceeds of any disposition of such properties or the earnings and profits derived therefrom would be secured for the New Haven until payment in full.

These liens should recognize, however, that the conveyance on December 31, 1968 was subject to a lien securing the New Haven's

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obligation on its so-called Harlem River Division Bonds which were assumed by Penn Central as part of the conveyance and that the properties of Boston and Providence Railroad Corporation will be subject to liens in favor of the United States and the holders of certificates of contingent beneficial interest in connection with the reorganization of B&P. Moreover, the Trustee recognizes that even among administration claims there is an order of priorities and it remains open to the United States District Court for the Eastern District of Pennsylvania to consider whether there are any rights in the Penn Central reorganization, e.g. of a governmental nature, which would be superior to the New Haven's rights with respect to the property subject to the liens.

The Trustee submits that this Court should make appropriate findings and orders in its order of remand providing that all property, assets and rights, except equipment and personal property conveyed on December 31, 1968 to Penn Central was subject as of that date to an equitable lien, and is also now subject to a judgment lien, securing payment of the purchase price of the property as determined by the Supreme Court and further providing that the property will remain subject to such liens until such time as the Commission has determined a mode of payment of such consideration which has been approved by this Court and upon such other judicial review as may pertain in the premises which permits modification of such liens.

4. With respect to the subject set forth in paragraph 3D of said Order of August 10, 1970:

Consistent with the liens of the nature set forth in paragraph 3 hereof, this Court should find and should order that the Penn Central Trustees direct The Fidelity Bank (Philadelphia, Pennsylvania) and Joseph F. McDonald, trustees under the indenture securing the presently outstanding Divisional First Mortgage Bonds of Penn Central Transportation Company, all of which are held by the Trustee, to pay over to the Trustee all monies held in such trust, representing the proceeds of sale of mortgaged property and of the investment of such proceeds. All payments remaining to be made by vendees of property heretofore released from the lien of said mortgage should also be paid over to the New Haven Trustee as soon as received by The Fidelity Bank or the Penn Central Trustees, and the latter should give notice to all such vendees of the same and make a demand for payment in accordance with the terms of the sales involved. So long as the liens remain in effect, as provided in paragraph 3 hereof, all proceeds from sales of such property in the future should be paid over directly to the New Haven Trustee. All monies so received by the New Haven Trustee shall be credited against the total consideration to be paid by Penn Central in conformity with the opinion of the Supreme Court.

5. With respect to the subject set forth in paragraph 3E of said Order of August 10, 1970:

The Supreme Court noted with respect to the controversy over the Grand Central Terminal properties that "all parties accept New Haven's right to the capitalized value of one-half the excess income" (Id., at p. 49). Under the circumstances of the Penn Central reorganization and the opinion of the Supreme Court as to the

of the capitalized value of such right as determined, equity requires that the New Haven be protected against third persons. It is submitted that the most appropriate form for such protection would be a payment over to the New Haven Trustee, as earned, of one-half the excess income from the Grand Central Terminal properties, to be applied against the total consideration to be paid by Penn Central. This Court, it is submitted, should order the Penn Central Trustees to make such payments on a quarterly basis to the New Haven Trustee, retroactive to July 1, 1970, the date when Penn Central failed to pay interest on its Divisional First Mortgage Bonds held by the Trustee.

It is recognized, however, that unlike payment over of proceeds from the sale of assets, the effect of payment over of current income from the assets, properties and rights conveyed by the New Haven on December 31, 1968 may involve considerations relating to Penn Central's operations. This Court's order with respect to such excess income may, accordingly, properly be made subject to the condition that a similar order be entered by the United States District Court for the Eastern District of Pennsylvania upon consideration of the effect of such an order upon carrying on Penn Central's operations during reorganization.

6. With respect to the subject set forth in paragraph 3F of said Order of August 10, 1970:

The plan of reorganization of Boston and Providence Railroad Corporation has been approved by the Commission, accepted by requisite votes, and confirmed by the Courts and is now in process of consummation. As hereinafter described, the Penn Central Trustees

Under the plan, the New Haven Trustee is required to pay to the B&P trustee an amount sufficient to distribute $110 for each share of B&P stock held by the public; the cash necessary for this purpose is $2,284,700. The plan also provides that new first mortgage bonds and certificates of contingent beneficial interest will be issued. The government will receive the first mortgage bonds in a total principal amount of $2,200,000. The certificates of contingent beneficial interest are for the benefit of all B&P stockholders and provide for participation in the net proceeds of certain sales of B&P real estate. Under the plan, substantially all B&P property, assets and franchises would be transferred to the New Haven Trustee.

In connection with the acquisition of the New Haven properties by Penn Central, the latter is required by orders of the Commission and this Court, now affirmed by the Supreme Court, as well as by the terms of the initial agreement dated April 21, 1966 among the Trustees of the New Haven, The Pennsylvania Railroad Company and The New York Central Railroad Company, to acquire the B&P property, assets and franchises from the New Haven and to assume obligations of the New Haven Trustee relating thereto as provided in the B&P plan. In its order dated December 24, 1968, authorizing the conveyance of the New Haven's properties to Penn Central on December 31, 1968, this Court specifically directed Penn Central to carry out various of the portions of the B&P plan. This Court should now, in conformity with the opinion of the Supreme Court, enter an order directing the Penn Central Trustees to carry out the B&P plan in conjunction with the New Haven Trustee, subject to consideration by the United States District Court for the Eastern

District of Pennsylvania as to the effect of such action on the Penn Central reorganization. Upon conveyance by the New Haven Trustee to the Penn Central Trustees of the B&P property, assets and franchises, all such property would be made subject to a lien securing the New Haven's right to be paid in full the total consideration for its assets, as provided in an agreement entered into by Penn Central on December 31, 1968, junior only to liens in favor of the United States as holder of the first mortgage bonds and the holders of the certificates of contingent beneficial interest. Any cash held by the B&P Trustee at consummation would be retained by the New Haven Trustee.

Richard Joyce Smith,
Trustee of the Property of
The New York, New Haven and
Hartford Railroad Company

By his Attorneys

James Wm. Moore,
Counsel for Trustee

Joseph Auerbach
Sullivan & Worcester
225 Franklin Street
Boston, Massachusetts 02110

Dated: August 17, 1970

UNITED STATES DISTRICT COURT

District of Connecticut

In Proceedings for the Reorganization of a Railroad

In the Matter of

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Debtor.

No. 30226

STATEMENT OF POSITION OF MANUFACTURERS HANOVER TRUST COMPANY AS TRUSTEE UNDER THE FIRST AND REFUNDING MORTGAGE OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY PURSUANT TO ORDER DATED AUGUST 10, 1970

Pursuant to Paragraph 4 of Order dated August 10, 1970 of this Court, Manufacturers Hanover Trust Company, as Trustee, concurs in and supports in substance the position of Richard Joyce Smith, Trustee of the property of the Debtor, with respect to the subjects set forth in Paragraph 3 of said Order.

August 21, 1970

Respectfully submitted,

MANUFACTURERS HANOVER TRUST COMPANY, as Trustee under The First and Refunding Mortgage of The New York, New Haven and Hartford Railroad Company

by its Attorneys

Simpson Thacher & Bartlett
One Battery Park Plaza
New York, N. Y. 10004

Horace J. McAfee
Albert X. Bader, Jr.
William H. Burck
Of Counsel

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NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

District of Connecticut

In Proceedings for the Reorganization of a Railroad

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In the Matter of

THE NEW YORK, NEW HAVEN
AND
HARTFORD RAILROAD COMPANY,

No. 30226

Debtor.

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STATEMENT OF POSITION OF MANUFACTURERS HANOVER TRUST COMPANY, AS TRUSTEE UNDER THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY GOLD BOND MORTGAGE OF 1897, PURSUANT TO ORDER DATED AUGUST 10, 1970 OF THE REORGANIZATION COURT

Manufacturers Hanover Trust Company ("MHT"), as Trustee under the New York Central and Hudson River Railroad Company Three and One-Half Percent Gold Bond Mortgage of 1897 (the "1897 Mortgage"), by its attorneys, submits this statement of position in accordance with Paragraph 4 of the Order for Hearing on Form

DOCUMENT NO. 11

of Order on Remand for Further Proceedings in the New Haven Inclusion Cases, entered by this Court on August 10, 1970 (the "August 10, 1970 Order").

MHT's INTEREST IN THESE PROCEEDINGS

As a Successor Trustee under the 1897 Mortgage, MHT has an interest in these proceedings which warrants its being heard. MHT is Trustee under certain other mortgages assumed by Penn Central Transportation Company and as such reserves its rights to oppose, on behalf of the bondholders of said mortgages, any action which would diminish the assets of Penn Central Transportation Company available for distribution to those bondholders.

The 1897 Mortgage grants to the Trustee, in trust, as security for an issue of bonds approximately $80,000,000 of which are presently outstanding, all the "right, title, interest and property" of the New York Central and Hudson River Railroad Company "in and to ...all terminal properties of every description," "in and to any and all other real property" and "to any and all rents, issues, profits, tolls and other income of such...terminal or other railroad properties, real estate and other properties of any kind...." 1897 Mortgage, Granting Clauses Four, Eight and Nine. The 1897 Mortgage also grants to the Trustee "the leasehold, right, title and interest of the Railroad Company, as lessee, in

and to...The New York and Harlem Railroad [in a lease dated] April 1, 1873." 1897 Mortgage, Granting Clause Second.

The Grand Central Terminal properties referred to in Paragraph 3E of this Court's August 10, 1970 Order are subject to the lien of the 1897 Mortgage. Because of the issues raised by this Court's August 10, 1970 Order, MHT, as Trustee under the 1897 Mortgage, is entitled to be heard on behalf of those bondholders.

MHT's STATEMENT OF POSITION

A. With respect to Paragraph 3A of the August 10, 1970 Order, MHT takes no position at this time.

B. With respect to Paragraph 3B of the August 10, 1970 Order, MHT considers that this Court should not indicate specific views or recommendations to the Interstate Commerce Commission respecting further proceedings in the premises, for reasons hereinafter discussed.

C, D and E. With respect to Paragraphs 3C, 3D and 3E of the August 10, 1970 Order, MHT considers that this Court cannot, and ought not, order an equitable lien or in any way encumber the assets conveyed to the Penn Central Transportation Company ("Penn Central") on December 31, 1968 and cannot, and

ought not, order the Trustees of Penn Central to pay the New Haven Trustee or any other person any income from the Grand Central Terminal properties or any income or other proceeds derived from any of the assets of Penn Central for reasons hereinafter discussed.

F. With respect to Paragraph 3F of the August 10, 1970 Order, MHT takes no position at this time except insofar as the position taken with respect to Paragraphs 3C, 3D and 3E reflects on orders of this Court affecting Penn Central Trustees.

THE GRAND CENTRAL TERMINAL PROPERTIES

When the New Haven Trustee asks this Court to order the Penn Central Trustees to pay him "one-half the excess income from the Grand Central Terminal properties" he ignores the fact that those properties are subject to the lien of the 1897 Mortgage.

The 1897 Mortgage provides that upon default in the payment of interest, and the expiration of a grace period, the Trustee "shall be entitled to collect and to receive all tolls, earnings, incomes, rents, issues and profits" of the mortgaged properties which, as noted, include the Grand Central Terminal properties.

Whatever the rights of the New Haven in the Grand Central Terminal properties vis-a-vis the rights of the New York Central, no one has ever suggested that those rights precede the rights of the Trustee of the 1897 Mortgage. As the rights of the New York Central and Hudson River Railroad Company are subject to the lien of the 1897 Mortgage, so necessarily are any rights the New Haven may have derived from the New York Central and Hudson River Railroad Company and its successors.

THE SUPREME COURT REMAND

The actions urged by the New Haven Trustee will steer this Court on a collision course with the Penn Central Reorganization Court. The order of June 21, 1970 of Judge Kraft approving the Penn Central's petition enjoined all persons from

> "...interfering with...or in any manner whatsoever disturbing any portions of the assets... properties or premises belonging to, or in the possession of the Debtor as owner, lessee or otherwise...and from commencing or continuing any proceeding against the Debtor...."

The New Haven Trustee, in the requests made to this Court in his August 17, 1970 Statement of Position, asks this Court to sanction his violation of the injunction of the Penn Central Reorganization Court.

Far from being justified under the terms of the Supreme Court's remand, the decision in the New Haven Inclusion Cases, ____ U.S. _____ (June 29, 1970), which sets forth the general principles governing the resolution of such conflicting jurisdiction in reorganization cases, makes it clear that the Penn Central Reorganization Court is the only forum with jurisdiction to grant the relief sought by the New Haven Trustee.

There, in affirming the jurisdiction of this Court, which under the circumstances considered by the Supreme Court was "the reorganization court", and in vacating judgements of the United States District Court for the Southern District of New York (referred to in the Supreme Court opinion as "the three-judge court"), the Supreme Court upheld the exclusive jurisdiction of the reorganization court (Slip opinion, p. 23):

> "...The jurisdiction of the reorganization court was not open to question. Upon its approval of the New Haven's petition for reorganization in 1961, that court had acquired 'exclusive jurisdiction of the debtor and its property wherever located....' Bankruptcy Act, §77(a), 11 U.S.C. §205(a)."

In addition to upholding exclusive jurisdiction of the reorganization court, the Supreme Court setsforth the reasons why that court also had primary jurisdiction (Id., pp. 29-30):

> "Surely a vesting of primary jurisdiction in the reorganization court comports with the basic purpose of §77. Congress enacted that statute in part 'to prevent the notorious evils and abuses of consent receiverships,' New England Coal & Coke Co. v. Rutland R. Co., 143 F.2d, at 184, of which one of the more egregious was the requirement of an ancillary filing and order of appointment in the federal court for every district in which the debtor had property. See Collier, supra, ¶77.02, at 467. Although, of course, the jurisdiction of the three-judge court was not ancillary to that of the reorganization court in a technical sense, dual review of issues ultimately going only to the valuation of the debtor's estate would resurrect the discredited practice of the equity receivership--it 'would tend greatly to foment conflicts between coordinate courts and compel creditors, in the protection of their interests, to ride the circuit, demonstrating the basis of their positions in successive courts.' In re New York, N.H. & H.R. Co., 26 F. Supp., at 23."

With these principles in mind the Supreme Court held that the United States District Court for the Southern District of New York should have deferred to the jurisdiction of this Court, as a reorganization court, by following the settled proposition that:

> "'the court which first acquired jurisdiction through possession of the property vested, while it holds possession, with the power to hear and determine all controversies relating thereto.' Lion Bonding & Surety Co. v. Karatz, 262 U.S. 77, 89."

This Court no longer "holds possession" of the property transferred to Penn Central on December 31, 1968. That property, including the New Haven's rights to the Grand Central Terminal properties and any income therefrom, is now part of the estate of Penn Central. Any dispositions with respect to that property can only be made by the Penn Central Reorganization Court which is the only Court capable of considering not only the status of the New Haven estate as a shareholder and a creditor of Penn Central, but the status of every other shareholder and every other creditor of Penn Central.

The "fairness and equity" that are the essence of a §77 proceeding (Id., p. 91) require consideration by the Penn Central Reorganization Court of the claims of all Penn Central shareholders and creditors to the limited assets of the Penn Central estate. That "fairness and equity" prohibits the seriatim preferential treatment which the New Haven Trustee now asks this Court to grant the New Haven estate's claims against Penn Central.

Dated: August 24, 1970

Respectfully submitted,

Kelley Drye Warren Clark Carr & Ellis

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Of Counsel:

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UNITED STATES DISTRICT COURT

District of Connecticut

In Proceedings for the Reorganization of a Railroad

In the Matter of

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.

No. 30226

RESPONSE OF MANUFACTURERS HANOVER TRUST COMPANY, AS TRUSTEE OF THE FIRST AND REFUNDING MORTGAGE OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, DEBTOR, TO THE STATEMENTS OF POSITION FILED BY THE INTERSTATE COMMERCE COMMISSION, MANUFACTURERS HANOVER TRUST COMPANY, AS TRUSTEE UNDER THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY GOLD BOND MORTGAGE OF 1897, AND THE REORGANIZATION TRUSTEES OF PENN CENTRAL TRANSPORTATION COMPANY

SIMPSON THACHER & BARTLETT
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HORACE J. McAFEE
ALBERT X. BADER, JR.
WILLIAM A. BURCK, III

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UNITED STATES DISTRICT COURT

District of Connecticut

In Proceedings for the Reorganization of a Railroad

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In the Matter of :

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, : No. 30226

Debtor. :

- x

RESPONSE OF MANUFACTURERS HANOVER TRUST COMPANY, AS TRUSTEE OF THE FIRST AND REFUNDING MORTGAGE OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, DEBTOR, TO THE STATEMENTS OF POSITION FILED BY THE INTERSTATE COMMERCE COMMISSION, MANUFACTURERS HANOVER TRUST COMPANY, AS TRUSTEE UNDER THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY GOLD BOND MORTGAGE OF 1897, AND THE REORGANIZATION TRUSTEES OF PENN CENTRAL TRANSPORTATION COMPANY

Pursuant to the order of this Court, dated August 10, 1970, Manufacturers Hanover Trust Company, as Trustee of the First and Refunding Mortgage of The New York, New Haven and Hartford Railroad Company ("First Mortgage Trustee"), replies as follows to the statements of position heretofore filed by (a) the Interstate Commerce Commission ("Commission"), (b) Manufacturers Hanover Trust Company, as

Trustee under the New York Central and Hudson River Railroad Company Gold Bond Mortgage of 1897 ("Penn Central 1897 Mortgage Trustee"), and (c) the Reorganization Trustees of Penn Central Transportation Company ("Penn Central Reorganization Trustees"). *

1. With Respect to the Commission's Statement

Consistent with our original statement, we do not disagree with the Commission's conclusion that it would not be appropriate at this time for this Court to undertake a new review of the provisions of Step II of the New Haven's Plan of Reorganization while the terms of Step I of the Plan remain unsettled.

We cannot, however, leave unchallenged the implications of the Commission's statement, at p. 2, that

> "The reorganization of Penn Central [Transportation Company] caused the Supreme Court to set aside this Court's finding that an inherent value of $87.50 per share inheres in the Penn Central [Company] common stock. [Footnote omitted] The market value of that stock at the writing of this statement is about $7.00 per share. Step II permitted the participation of the income bondholders in the plan of reorganization. The Commission must have flexibility to determine whether such participation is still practical in view of these changed circumstances."

While we agree that the recent history of the Penn Central has served to support the consistent position of the first mortgage bondholders that, absent a substantial increase in the consideration received by the New Haven over

*We concur with the response of The Chase Manhattan Bank, N.A., as Trustee under the Debtor's General Income Mortgage to the

what the Commission allowed, there was no equity for the income bondholders, we do not agree that this Court accepted the Commission's valuation of Penn Central stock; it did so only in the context of the "underwriting formula". Moreover, we submit that the Supreme Court, in vacating this Court's order in that respect, recognized that what the New Haven was entitled to was "full compensation" for the fair value of the assets it sold. Thus, we submit, the Commission's reference to the current price of Penn Central stock in contrast to the Commission's $87.50 valuation may imply a misconstruction of the decisions of this Court and of the Supreme Court. The Commission would gravely misread the decisions of both Courts if it conceived its task as anything less than to formulate a package of consideration which would compensate the New Haven for what it has sold without regard to, and irrespective of, Penn Central's subsequent insolvency.

With respect to the Commission's response to the question whether this Court should indicate "views or recommendations" in connection with its remand to the Commission, we fail to see any merit in the Commission's suggestion that in making recommendations, this Court would "risk a prejudgment of the merits of a plan of reorganization." As we have noted above, there is a serious danger that the Commission will misconstrue the meaning and impact of the decision of this Court dated May 28, 1969, and the decision of

the Supreme Court. In effect, as a result of the remand of the Supreme Court, this Court now has before it the plan of reorganization in a context which is jurisdictionally no different from the context in which its May 28, 1969 decision was written. This Court now has before it a plan of reorganization formulated by the Commission in its Fourth Supplemental Report which this Court and the Supreme Court, after full hearings on the merits, and a review of the record before the Commission, have found wanting in a number of very substantial respects. In view of the fact that the Supreme Court remanded these proceedings to the Reorganization Court, we submit that it is entirely consistent with the proper function of this Court to make clear in connection with its remand to the Commission, any deficiencies in Step I of the Plan of Reorganization submitted by the Commission which, in its view, may remain obscure as a result of the opinions of this Court and of the Supreme Court. It is equally appropriate for this Court, on such remand after hearing, to suggest the manner in which the Plan might appropriately be remedied to cure these deficiencies. Section 77(e) provides that if the judge shall not approve a plan, he shall state his reasons; this would seem to invite clarifications of, and suggestions concerning, matters not adequately covered in the Court's opinions which required a remand.

With respect to the Commission's statement of position

on the question whether this Court may order an equitable lien or otherwise subject the assets conveyed by the New Haven to a first security interest in favor of the New Haven, we do not attach the same significance or meaning as does the Commission to the portion of the Opinion of the Supreme Court quoted at the top of p. 5 of the Commission's statement. In context, we believe the reference to "courts" in the plural should be read as referring to the lower courts which are to exercise further jurisdiction over the New Haven Section 77 proceeding, namely, this Court and the Court of Appeals for the Second Circuit, and the Three Judge District Court. If any reference to the United States District Court for the Eastern District of Pennsylvania as the Court for the reorganization of Penn Central Transportation Company ("the Pennsylvania Court") were intended, it could only have been to the function of that Court in connection with a plan of reorganization of Penn Central Transportation Company after the basic problem of the form of consideration and the nature of the lien to be imposed had been determined by the Commission, the New Haven Reorganization Court, and if necessary, the Court of Appeals for the Second Circuit and the Supreme Court of the United States. The Supreme Court could not have contemplated that this valuation issue, already litigated before the Commission as well as twice before two federal courts and thereafter the Supreme Court itself, would now also be litigated before the Pennsylvania Court. We do not understand either the Supreme Court's decision or

applicable precedent as suggesting that the jurisdiction of this Court and of the Pennsylvania Court is coordinate in the sense the Commission implies. We agree with the Commission's statement on p. 4 that

> ". . . the vesting of that jurisdiction [i.e., the jurisdiction of the United States District Court for the Eastern District of Pennsylvania as the Court for the reorganization of Penn Central Transportation Company] did not oust this Court of its jurisdiction over the form of the consideration and New Haven's status as a shareholder or creditor of Penn Central."

We disagree, however, with the prior and inconsistent statement of the Commission that Penn Central's petition for reorganization vested exclusive jurisdiction over the New Haven properties in the Pennsylvania Court insofar as it implies either that the Pennsylvania Court at this stage of the proceedings has any jurisdiction over the New Haven's present "properties", or that this Court is without jurisdiction with respect to the property of the New Haven which was conditionally conveyed on December 31, 1968 subject to this Court's further order as to "price".

Both Penn Central and its subsidiary, the Transportation Company, submitted themselves to the in personam jurisdiction of this Court long prior to the commencement of the proceedings for the reorganization of the Transportation Company, and it is our view that this Court has jurisdiction initially to determine the form of consideration to which New Haven is entitled, including the right to determine, as

between the New Haven and Penn Central, the nature of the New Haven's security interest in respect of payment of such consideration. We regard the Supreme Court's decision remanding this case to this Court as establishing that point beyond question. We recognize, of course, that the Pennsylvania Court will later have jurisdiction, as the court for the reorganization of Penn Central Transportation Company, to approve a plan of reorganization of Penn Central Transportation Company in accordance with the provisions of Section 77 of the Bankruptcy Act. We do not regard these two different functions as making the jurisdiction of this Court and of the Pennsylvania Court coordinate nor do we agree with the Commission that a conflict may arise from the exercise by this Court of its undoubted jurisdiction.

In view of the vagueness of the Commission's statement of its intention as to the manner in which it proposes to proceed on remand, we are not in a position to comment fully on its proposals at this time. We do not believe, however, that it would be desirable--or proper--to consolidate the remand hearings on the plan of reorganization of the New Haven with any aspect of the reorganization of Penn Central Transportation Company. To do so, we submit, would invite jurisdictional conflicts, particularly on review of Commission action, of a sort even more serious than that which the Supreme Court found inappropriate in its decision. Moreover, it would commingle problems relating to the reorganization of the

Transportation Company with the entirely separate issues which will be before the Commission on this remand, namely, the nature and form of the "price" owing to the New Haven for its assets.

As to the Commission's response to the question whether this Court should order the proceeds of the sale of mortgaged property or income from the Grand Central Terminal Properties to be paid over to the New Haven, consistent with what we have said above we submit that the entry of such an order is within the jurisdiction of this Court as a temporary measure pending determination of the payment to be received by the New Haven in exchange for its assets.

2. With respect to the Statement of Position of the Penn Central 1897 Mortgage Trustee

The principal thrust of the statement filed by the Penn Central 1897 Mortgage Trustee appears to relate to the income from the so-called Grand Central Terminal Properties, which, in its view, is wholly subject to the first lien of the 1897 Mortgage.

This assertion, we submit, disregards the history and basis of the New Haven's rights in the excess income from the Grand Central Terminal Properties. As the Special Master pointed out in his initial report (pp. 7-8),* the New Haven's

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* Page references to the Report of the Special Master are to the pages in the original printed copy.

rights in this respect arise out of the lease agreement dated March 17, 1848 between the New Haven's predecessor and The New York and Harlem Railroad Company (the "Harlem Railroad"), which was executed 25 years prior to the transactions which gave rise to the right of the New York Central (then known as The New York Central and Hudson River Railroad Company) to use the Harlem Railroad's facilities in New York City and to its lease dated April 1, 1873 of the Harlem Railroad. The Tripartite Lease among Central, the Harlem Railroad and the New Haven expressly recognizes the rights of the New Haven under the 1848 Agreement. The continued vitality of the New Haven's rights was likewise expressly recognized in the Agreement of 1907 which defined the respective rights of Central, the Harlem Railroad and the New Haven with respect to the so-called Grand Central Terminal Properties and to the use of the new Grand Central Terminal itself, in view of the agreement of all parties, in compliance with the New York Statutes, to construct a new terminal and cover over the terminal facilities.

As the decision in New York Central R. Co. v. New York, N.H. & H. R. Co., 13 A.D. 2d 309, 216 N.Y.S.2d 928 (1st Dep't 1961), aff'd, 11 N.Y.2d 1077, 184 NE 2d 194 (1962) (the Biltmore case) made plain, Central and the New Haven entered into a joint venture for the commercial development of these properties to which each contributed substantial sums of money and credit. The right sought to be

asserted by the New Haven Reorganization Trustees is not any right of Central or any right which Central had the power to mortgage, but the right of the New Haven which grew out of the New Haven's prior rights, based upon the 1848 and 1873 agreements, and out of the New Haven's investment and participation in the joint venture. Thus, contrary to the suggestion of the Penn Central 1897 Mortgage Trustee (Statement of Position, dated August 24, 1970, at p. 5), it is very definitely the position of the First Mortgage Trustee that the New Haven's rights in the Grand Central Terminal Properties predate and are prior to and independent of any rights which Central may have transferred to its Mortgage Trustee by the 1897 Mortgage. In so doing, we submit, we do nothing novel. The view we take of the New Haven's rights, and their genesis, is substantially identical to the view taken by Cornelius Wickersham, in his decision as an arbitrator in 1905. As the Special Master noted in his Report (p. 9), the New Haven did not come as a supplicant to the negotiation of the 1907 Agreement but rather as a party already enjoying substantial rights based on the 1848 Agreement and the Tripartite Lease of 1873 which were fully sustained by the Wickersham Report.

As we suggested above, we also disagree with the position of the Penn Central 1897 Mortgage Trustee that this Court or the New Haven Trustee is precluded by the June 21, 1970 Order of the Pennsylvania Court, entered ex parte, from taking such steps as are necessary to preserve and effectuate

the New Haven's rights growing out of the inclusion of the New Haven's physical assets in Penn Central on December 31, 1968, subject to the further order of the Commission and this Court as to the consideration to be paid.

Certainly, it can hardly be said that the situation of the New Haven here is a common one. In the public interest and by order of this Court, the New Haven assets were transferred prior to a final determination as to the consideration to be paid, in the face of assertions, now supported by the decision of this Court and of the United States Supreme Court, that the New Haven was entitled to greatly increased consideration.

Under these circumstances, and in view of the Supreme Court's remand, we submit that it is this Court and the Commission, in the first instance, which must determine the form of consideration which Penn Central must pay and the nature of the New Haven's security interest. It is likewise, we submit, within the power of this Court--and in aid of its jurisdiction--to determine what steps are necessary and appropriate to reduce to possession at least so much of the property of the New Haven which was conditionally transferred, as may be necessary to prevent the complete frustration of the reorganization of the New Haven. The issue here is whether, in the circumstances of this case, the mandate of the Supreme Court and the jurisdiction of this Court do not afford sufficient grounds upon which this Court may direct the recovery of, or

the imposition of a lien upon, the property of the New Haven in the hands of third parties, whether they be the Penn Central Reorganization trustees, the trustee of the New Haven divisional mortgage or the Penn Central 1897 mortgage trustee. We respectfully submit that they do so.

3. With respect to the Statement of Position of the Penn Central Reorganization Trustees.

The Penn Central Reorganization Trustees, coming new to this proceeding, misunderstand the history and the situation which led to the conditional transfer of the New Haven operating assets to Penn Central on December 31, 1968, pursuant to the Order of this Court. Thus, they fail to understand that the transfer of the New Haven to Penn Central was imposed by the public interest, and was principally supported by the States of New York, Connecticut and Massachusetts, the Interstate Commerce Commission, the United States Departments of Justice and Transportation, and the Reorganization Trustees of the New Haven. It was this public interest which precluded liquidation of the New Haven, as the New Haven Bondholders Committee sought, and which required the New Haven to continue operations in spite of ever mounting losses for some seven and one-half years. It was likewise the public interest which required that Penn Central carry out the commitment to take over the New Haven and continue its operations that it had made in order to obtain approval of its merger.

The New Haven Bondholders did not oppose the conditional transfer because they recognized that the public interest required continued operations and because they had the assurances of this Court and of the Commission that the question of the form and amount of the consideration which Penn Central was ultimately to pay for the New Haven assets remained sub judice, specifically reserved for determination by the reviewing courts.*

It is precisely that same issue, namely, the amount and form of the consideration which Penn Central is to pay, which is now before this Court on remand. This question we submit is one which this Court and the Commission must determine, in accordance with the provisions of Section 77, as an aspect of the reorganization of the New Haven.

Contrary to the position of the Penn Central Reorganization Trustees (p. 3) that "It is basic that the New Haven . . . is an unsecured creditor and holds no lien

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* Apparently the Penn Central Reorganization Trustees are likewise unaware of the fact that at least until December 31, 1968, there was and could be no such thing as the "New Haven interests" speaking with one voice on any subject. It is certainly not the fact, as the Penn Central Reorganization Trustees assert at p. 5 of their Statement that "the New Haven interests . . . insisted that the consideration be paid in major part in Penn Central stock . . . ." if that reference is intended in any way to refer to the position of the First and Refunding Mortgage Bondholder representatives. The agreement whereby Penn Central stock became the principal portion of the consideration to be paid by Penn Central was one negotiated by the New Haven Reorganization Trustees without the knowledge or participation of any of the New Haven creditors. Presumably, it was agreed to by Penn and Central in order to minimize their immediate cash requirements.

or any other secured rights or interest in any of the former New Haven properties or in any other property of Penn Central" we submit that the decision of the Supreme Court remanding this case for determination of the form of consideration cannot be read as suggesting in any way that that Court regarded this proposition as anything but open for resolution on remand. In fact, we regard as "basic" the fact that the Supreme Court plainly recognized that this Court and the Commission continued to have jurisdiction and the obligation, under Section 77, to determine the precise question which is now presented, namely, the form which the consideration to be paid by Penn Central should take.

Thus, far from being controlled by res adjudicata, the question of what consideration the New Haven is entitled to is one which was specifically and explicitly left open by the Supreme Court on remand and one which consistent with the Decision of the Supreme Court, must be decided in this proceeding by the Commission and this Court.

The misconception of the Penn Central Reorganization Trustees is perhaps made more obvious by their so-called second "fundamental proposition", set forth at p. 6 of their Statement of Position that "neither the Commission nor this Court may . . . alter rights, liens, priorities or interest of the various claims in that estate as they existed at the time of the institution of the Penn Central Reorganization proceeding."

It is not an "alteration" but a determination of the nature of the rights, liens, priorities or interests of the New Haven which this Court and the Commission has specifically reserved and must now determine.

In short, as a result of the remand, this Court and the Commission, under Section 77, must proceed to determine for purposes of the reorganization of the New Haven what consideration is due on the transfer and the form and nature of the consideration to be paid. This is a different question from that which will come before the Commission and ultimately the Pennsylvania court in connection with the formulation of a plan for the reorganization of Penn Central Transportation Company. It is, we submit, precisely because of (a) the conditional transfer of the New Haven to Penn Central made necessary by the public interest and because (b) the Supreme Court has explicitly left open for determination by the Commission and this Court in the proceedings for the reorganization of the New Haven the question of the form of consideration which Penn Central is required to pay in order to complete that transaction, that the analogy suggested at the foot of p. 7 of Penn Central Reorganization Trustees' Statement of Position is wholly inapposite. This is not an action for the payment of money nor is this Court asked to enter a judgment for money; rather, this is a transaction where, in the public interest, a conditional transfer was made on assurances which the Supreme Court has recognized were required by constitutional due pro-

cess and by the language of Section 77 of the Bankruptcy Act and which it remanded in order that the obligation be fixed. What is before this Court may in a true sense be sui generis, and it is that factor, we submit, which strongly counsels that in connection with its order of remand to the Commission, this Court would be well advised, consistent with the direction of Section 77, to give the Commission the benefit of its views, based upon the record already made, of what the form of consideration to be paid to the New Haven ought properly to take.

In view of the foregoing discussion, we submit that contrary to the position of the Penn Central Reorganization Trustees at pp. 12 through 13, this Court and the Commission have jurisdiction to impose an equitable lien on the former New Haven property in the course of determining the

form of the consideration to which the New Haven is entitled.*

New York, N. Y.
November 10, 1970

Respectfully submitted,

Manufacturers Hanover Trust Company, as Trustee of The First and Refunding Mortgage of The New York, New Haven and Hartford R.R. Company, as Debtor

Simpson Thacher & Bartlett
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By _____
A Member of the Firm

Horace J. McAfee
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Of Counsel

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* For the reasons set forth in the Rebuttal Statement of The Chase Manhattan Bank, N. A., as Trustee, which we endorse, we cannot see any merit in the contention of the Penn Central Reorganization Trustees that, inasmuch as the New Haven properties were conveyed free and clear of all existing liens, except the lien of the new divisional mortgage, the New Haven "waived" its right to have its equitable lien recognized.

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NEW HAVEN, CONN.

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UNITED STATES DISTRICT COURT

District of Connecticut

In Proceedings for the Reorganization of a Railroad

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In the Matter of :

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, : No. 30226

Debtor. :

- -x

MEMORANDUM OF MANUFACTURERS HANOVER TRUST COMPANY, AS TRUSTEE OF THE FIRST AND REFUNDING MORTGAGE OF THE DEBTOR WITH RESPECT TO THE REMAND ORDER

SIMPSON THACHER & BARTLETT
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Of Counsel.

January 4, 1971

UNITED STATES DISTRICT COURT

District of Connecticut

A 55

In Proceedings for the Reorganization of a Railroad

- -x

In the Matter of :

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, : No. 30226

Debtor. :

- -x

MEMORANDUM OF MANUFACTURERS HANOVER TRUST COMPANY, AS TRUSTEE OF THE FIRST AND REFUNDING MORTGAGE OF THE DEBTOR WITH RESPECT TO THE REMAND ORDER

This memorandum is submitted pursuant to the permission granted by this Court at the hearing on November 18, 1970 to all parties to submit briefs in support of their respective positions on the scope and terms of this Court's remand order. Manufacturers Hanover Trust Company, as Trustee of The First and Refunding Mortgage of the Debtor has heretofore filed a statement of position and a response, in which it stated its position on the six

questions posed in paragraph 3 of this Court's Order of August 10, 1970. We adhere to that position now.

We agree with the position of the Debtor's Reorganization Trustee, in his brief dated January 4, 1970, that the principal issue which warrants extended discussion at this point is his contention, in which we fully concur, that this Court should hold that an equitable lien exists in favor of the New Haven on the properties, rights and assets transferred to Penn Central on December 31, 1968 for the balance of the consideration due to the New Haven from Penn Central. We are also in full accord with the argument set forth in the Reorganization Trustee's brief on this subject and adopt it as our own.

We also concur with the position expressed in the brief, dated December 30, 1970, filed by Chase Manhattan Bank, N.A., as Trustee of the Debtor's General Income Mortgage, namely, that the power of the Reorganization Court under Section 77 of the Bankruptcy Act is not confined to property in its "possession" and that the proceeds of the sale of any New Haven properties by Penn Central, which are now on deposit or are hereafter deposited with the Fidelity Bank as Trustee, be delivered

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by said Trustee to the New Haven Reorganization Trustee.

Dated: New York, New York
January 4, 1971

Respectfully submitted,

SIMPSON THACHER & BARTLETT

By _____
A Member of the Firm
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Of Counsel.

JAN 27 12 09 PM '71
U.S. DISTRICT COURT
NEW HAVEN, CONN.

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UNITED STATES DISTRICT COURT

District of Connecticut

In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	No. 30226

REPLY MEMORANDUM ON BEHALF OF MANUFACTURERS HANOVER TRUST COMPANY, AS TRUSTEE OF T E FIRST AND REFUNDING MORTGAGE OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

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Of Counsel.

Dated: January 26, 1971

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UNITED STATES DISTRICT COURT

District of Connecticut

In Proceedings for the Reorganization of a Railroad

In the Matter of

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Debtor.

No. 30226

REPLY MEMORANDUM ON BEHALF OF MANUFACTURERS HANOVER TRUST COMPANY, AS TRUSTEE OF THE FIRST AND REFUNDING MORTGAGE OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

Preliminary Statement

This memorandum is submitted in response to the brief of the Trustees of Penn Central Transportation Company ("Penn Central Trustees") dated January 4, 1971. It is not our intention to burden this Court with any extended statement of facts which are already well known to it. We do, however, believe that it is vital to a proper assessment of this case to point out the fundamental difference between the facts that gave rise to the transfer on December 31, 1968 of

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the bulk of the New Haven assets as we understand those facts, and as they are set forth in the brief filed on behalf of the Penn Central Trustees.

Apparently, the Penn Central Trustees would have it that this transfer was essentially the voluntary implementation of a consensual arrangement whose principal outlines had been arrived at by agreement as early as April 21, 1966 when the original "Purchase Agreement" among Pennsylvania and Central and the New Haven Reorganization Trustees was executed. This theme first appears at page 5 of the Penn Central Trustees' brief and recurs at pp. 7, 21, 33, 35-38, 46; in fact, it undergirds the bulk of their legal and factual analysis of the questions which this Court raised in its August 10, 1970 Order.

In spite of the position now taken by the Penn Central Trustees, we do not believe that it has ever been seriously contended that the "Purchase Agreement" among Pennsylvania and Central and the New Haven Reorganization Trustees in any way reflected the judgment or position of the real parties in interest on the New Haven side, namely, the secured creditors of the New Haven. In fact, it has been our consistent position that the Purchase Agreement had no binding effect upon the New Haven, it was made without their consent and without the prior approval of this Court. Indeed, the first point in time at which the New Haven bondholder

interest had an opportunity to express a formal position upon the 1966 Agreement was in connection with Proposed Order No. 404 of this Court which all of the bondholder interests opposed and which several of them ultimately appealed to the United States Court of Appeals for the Second Circuit. Cf. In the Matter of the New York, New Haven and Hartford Railroad Company, 378 F. 2d 635 (1966).

From the time in 1966 when the Trustees first sought approval by this Court of the terms of the Purchase Agreement as part of a proposed Plan of Reorganization of the New Haven, the New Haven bondholder interests have consistently taken the position that the Agreement was inequitable and failed fairly to compensate the New Haven. Neither can it be said, as the Penn Central Trustees several times assert in their brief, that the New Haven bondholder interests "sought" to have a substantial portion of the New Haven consideration paid in Common Stock of the merged company. While the General Income Bondholders took this position, it was the consistent position of the First Mortgage interests that the New Haven was entitled to receive the fair value of what was transferred in cash or its equivalent, although they recognized that it might be difficult for Penn Central to pay the full consideration in cash.

Neither, in our view, can it be fairly said that the transfer of the New Haven assets to Penn Central on December 31, 1968 was a voluntary act on the part of the New Haven interests. The Bondholders Committee had sought to terminate the reorganization and compel liquidation as early as March, 1967. This Court--and, by implication, the Commission,-- rejected this effort on the ground that the public interest in continued operation of the New Haven railroad precluded such a course, although this Court made clear in its First Remand Decision that the continued wastage of the New Haven assets through operating losses could not be tolerated, even in the public interest, beyond December 31, 1968.

It was this indication of the views of this Court which led the Commission, in its Fourth Supplemental Report, to not merely modify the terms of the transfer, but to provide that, absent a specific stay, the transfer of the New Haven assets was to take place on December 31, 1968 regardless of the pendency of any proceedings to review other aspects of the Commission's order. In the proceedings in this Court--and in the Three Judge Court--in December, 1968 with respect to the transfer, it was the representatives of the public interest who took the lead in urging that the transfer be made effective, regardless of the pendency of challenges on the question of the form and amount of the

consideration. In fact, the New Haven Bondholder representatives were deliverately excluded from the "closing"; only the New Haven Trustees participated in that transaction with representatives of Penn Central.

Furthermore, the Penn Central Trustees seem to consider irrelevant their posture from the inception as a purchaser who agreed to be bound by any and all conditions which this Court might impose upon the purchase of the New Haven assets, which was a precondition to the Supreme Court's assent to the merger of Pennsylvania and Central.

> "With Penn Central having given its irrevocable consent to the inclusion of New Haven by its act of merger, it was evident that whatever terms the reorganization court might confirm subject to review on appeal to the Court of Appeals followed by certiorari here, would bind Penn Central by virtue of its merger commitment." (399 U.S. at 428) (emphasis added)

Finally, the Penn Central Trustees would have this Court treat the remand by the Supreme Court as an essentially futile exercise. It is clear however, that the Supreme Court did not consider the petition for reorganization filed by Penn Central to oust this Court of its function in determining what the form of the consideration was to be. In this regard, we refer to the following statements in the New Haven Inclusion Cases decision (399 U.S. at 488-92):

> "The fairness and equity that are the essence of a §77 proceeding forbid our approval of a payment for

> the transferred New Haven properties that may be worth only a fraction of its purported value. . . .
>
> "The purchase price that the Commission and the reorganization court have required Penn Central to pay to the New Haven estate is based upon the liquidation value of the seller's assets, appraised as of December 31, 1966. That price hypothesizes a shutdown of New Haven followed by a sell-off of its assets at their highest and best value. In the circumstances of this case, and for the reasons we have already set out at length, we agree with the reorganization court that it would be unfair and inequitable to allow Penn Central to take the properties for any lesser sum. . . . There is no longer room for dispute that the bondholders will receive the highest and best price for the assets of the debtor as of December 31, 1966."

Furthermore, the Supreme Court was clearly not ordering a remand to this Court so that the latter might give automatic deference to the Penn Central Reorganization Court; it stated (399 U.S. at 489-90) that

> "In the circumstances of this case, and for the reasons we have already set out at length, we agree with the reorganization court that it would be unfair and inequitable to allow Penn Central to take the properties for any lesser sum. Moreover we today require a reassessment of the consideration that Penn Central is to give in exchange for those properties. We thereby accord the bondholders the right to a liquidation and a per-parcel sale that is theirs by virtue of their mortgage liens. (Emphasis supplied)

Clearly if one were to take the Penn Central Trustees' statement at face value, the inherent right to a liquidation and per-parcel value, as of December 31, 1966, fully recognized in the Supreme Court decision, could be somehow converted into an unsecured creditors' status, in direct contradiction to what the Supreme Court stated the New Haven interests' position should have been and should be construed to have been as of December 31, 1968.

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I. This Court Has Exclusive and Summary Jurisdiction to Impose a Lien on and to Determine any Other Questions Affecting The New Haven Properties Now Being Operated by Penn Central Transportation Company.

The assertion by the Penn Central Trustees that this Court lacks jurisdiction to impose an equitable lien is premised on the alleged failure of this Court to retain "possession", either actual or constructive, over the New Haven properties after December 31, 1968. To treat the Order of this Court directing inclusion of the New Haven properties in the Penn Central as a simple sale of assets as in an ordinary bankruptcy action, would be to ignore the singular pattern of the conditional transfer involved in this case. First, it is indisputable that both this Court and the Commission concluded that, in order to keep the New Haven operating, the transfer of the New Haven had to be completed in the public interest by January 1, 1969, before any other aspects of the Reorganization Plan could be finally determined. Secondly, it is equally clear that, in order to effectuate its own merger, Pennsylvania and New York Central came as voluntary purchasers of the New Haven assets before this Court (see transcript of Oral Argument, before the Supreme Court 12/4/67, pp. 136, 144-145 and Memorandum of this Court, on Order of Inclusion, December 27, 1968)

and thereby agreed to be bound by this Court's Decision on all aspects of the transfer; at the same time Pennsylvania and New York Central made it unequivocally clear that they were willing to pay for the New Haven properties whatever price might ultimately be found to be fair and equitable. As the Penn Central merger order provided, "Consummation of the merger by the applicants shall indicate their full and complete assent to these conditions", including the requirement that they acquire the New Haven on whatever terms the Commission and this court found fair and equitable.

Moreover, it is well established that a purchaser of assets of a debtor, pursuant to proceedings before the bankruptcy court having jurisdiction of the assets of that debtor, submits himself to the jurisdiction of that court and agrees to undertake all acts directed by that court to carry out the terms of the purchase agreement. Frazier v. Ash, 234 F.2d 320 (1956): see 4 Collier on Bankruptcy, 14th Ed., 570, 93 and cases cited therein. In Re J. Jungman Inc., 186 Fed. 302 (1910): Certainly, it cannot be argued by the Penn Central Trustees at this time that it was contemplated by either this Court or the Commission in their conclusion to direct a preliminary transfer before resolution of the price and form of consideration issues that the terms of the inclusion were severable and independent of each other. The Commission, 334 I.C.C. at 75, indicated that the New Haven creditors were not to surrender their liens on the

New Haven properties for any doubtful payment of contingent price:

> "The NH creditors are guaranteed just and reasonable compensation and other terms for their interests in the NH, whenever distribution of the compensation shall occur, whether at the time of or after the properties pass to Penn Central. Since Penn Central must include the NH and must pay a price just and reasonable to all concerned, the creditors lose nothing, vis-a-vis Penn Central, by having their liens transferred from the NH properties to the consideration which Penn Central will eventually have to pay." (33[illegible] I.C.C. at 75) (empnasis added)*

Further, the Commission clearly understood that both the transfer and the consideration were parts of the same transaction and that completion of one depended upon the satisfaction of the other:

> "The Inclusion. . . is nothing less than a binding transfer to Penn Central free and clear of all liens and encumbrances of all the assets of New Haven proposed to be transferred under the Agreement between Penn Central and New Haven, as amended, and the concurrent payment to the New Haven Trustees of the consideration which we have held found to be fair and equitable." 33[illegible] I.C.C. at 76.

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* The First Mortgage Trustee was never satisfied that the Commission's order or the Court's "underwriting formula" provided such a "guarantee". As we noted in our Jurisdictional Statement to the Supreme Court, filed in December, 1969, the "underwriting" failed to provide any security to insure that the bondholder would recover on the "underwriting" if Penn Central were to become insolvent during the "underwriting" period.

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In its Memorandum of Decision on Inclusion and Payment by January 1, 1969 this Court noted that Penn Central had argued that this Court must accept the inclusion and all terms of price and form of consideration as determined by the Commission or reject the same in toto. In rejecting this argument, this Court noted at The New Haven Inclusion Cases, Appendix of Decisions, at 265a, that:

> ". . . in its role 'as volunteer' it forgets that its [Penn Central's] agreement to include the New Haven was a condition precedent to its own right to merge; that once it did merge as it did on February 1, 1968, it was 'stuck with' taking over the New Haven even though it was a losing operation on whatever terms the Commission may find fair and equitable, subject to the approval of the Reorganization Court. In this sense it was an open end agreement. . . . with regard to the claim of a 'unitary' concept underlying the Plan, particularly with regard to inclusion and final determination of price, it should be noted that the Commission, which made the Plan, . . , repeatedly said that inclusion should not be delayed pending jurisdictional review of price or the Reorganization Plan."

The Court went on to say that the payment specified by the Commission should be made, but made no intimation that the transfer should be considered complete until the transaction was finally completed on the terms which would have been determined by pending and future litigation. Indeed, it said:

> "Under the present circumstances of this case, the review of the Commission's Plan can only be made in piecemeal fashion. No other way is possible in the light of the emergency faced by the New Haven. . . . Certainly, neither the Commission nor the courts nor the parties ever contemplated that because no precise time was fixed for inclusion and no exact price was determined when the takeover of the New Haven became a condition of the Penn Central merger, that a long attenuated struggle over the price issue could turn inclusion into a practical impossibility." (Id., at 266-7a)

The Penn Central Trustees assume that the jurisdiction of this Court rests on possession, either actual or constructive. It is submitted, however, that this distillation of the question of jurisdiction is simplistic and misleading in light of the circumstances of this transaction and, further, in light of the explicit consent of Penn Central and the clear understanding by both the Commission and the reviewing courts that Penn Central was a party to a continuing transaction and that the transfer of the New Haven properties was conditional and not finally determined until the remaining terms of the inclusion were resolved. Penn Central itself recognized the incomplete state of the acquisition in its attempts, before this Court and the Three Judge Court, to prevent the transfer of the New Haven assets until all the terms of the transaction were finally determined, contending that it was possible that the transfer might subsequently have to be "unscrambled". (Cf. The New Haven Inclusion Cases, Appendix of Decisions, pp. 387-93a)

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It is well established in bankruptcy practice that the jurisdiction of a bankruptcy court rests either on possession or on consent. See Magnolia Petroleum Co. v. Thompson, 309 U.S. 478 (1940); 2 Collier on Bankruptcy, 14th Ed., §23.04 and cases cited therein. As a voluntary purchaser of the New Haven assets and by its participation in the proceedings before this Court, Penn Central submitted itself to the jurisdiction of this Court until the determination and performance of all the terms of the sale. This included all the appropriate acts that this Court might require in the exercise of its jurisdiction, in order to complete the open ended transaction which Penn Central entered into in order to obtain approval of its merger.*

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* The Penn Central Trustees do not so state, but their entire analysis of the jurisdiction in this Court may be said fairly to rely on the concept often applied in ordinary bankruptcy transactions, that once a sale is confirmed and an unconditional transfer is completed, the jurisdiction of the bankruptcy court over the property terminates and does not follow it in order to determine claims, impose conditions or limitations or declare a trust upon the property. While this rule is adequate to describe the loss of jurisdiction by the bankruptcy court in most bankruptcy sales the concept is applicable only where the Court has not validly assumed an obligation to protect the vendor or purchaser subsequent to the transfer. See In Re Paddock of California, 226 F. Supp. 43 (1964); Mutual Life Insurance Company v. Menin, 115 F.2d 975, cert. denied 313 U.S. 578 (1941); S. F. Myers Co. v. Tuttle, 183 F. 235 (1910). There can be no question that this Court, in the exercise of its statutory authority, reserved jurisdiction to determine and fix the terms and form of the consideration equivalent to the liquidation value, given that liquidation was impossible because of the public interest. To protect its jurisdiction, therefore, it may pursue its validly assumed obligation regardless of the transfer of the New Haven properties to Penn Central.

The Penn Central Trustees argue further that this Court cannot declare an equitable lien on the properties of the New Haven transferred to Penn Central because such a declaration would be in the nature of an in rem proceeding (see Penn Central Trustees' Brief, pp. 15-17). This reflects a misconception of the nature of the declaration of an equitable lien on properties transferred. As stated in Pomeroy, Equity Jurisprudence, Fifth Edition, §1233, at p. 692:

> "An equitable lien is not an estate or property in the thing itself nor a right to recover the thing--that is, a right which may be the basis of a promissory action; it is neither a jus ad rem nor a jus in re. It is simply a right of a special nature over the thing, which constitutes a charge or encumbrance upon the thing so that the very thing itself may be proceeded against in equitable action . . . It is the very essence of this condition that while the lien continues the possession of the thing remains with the debtor or the person who holds the proprietary interest [here the Penn Central] subject to the encumbrance. . . . This special right is not an estate of any kind; it does not entitle the holder to a conveyance of the think or to its use; it is really a right to secure the performance of some outstanding obligation."

If the equitable lien is understood in this proper sense, the objections made by the Penn Central Trustees are inapposite; it is not disputed here that Penn Central did take legal title to and the right to operate the New Haven properties and that operation of the former New Haven properties is within the exclusive jurisdiction of the Penn

Central Reorganization Court. This has nothing to do with the right of this Court to declare that an equitable lien exists. To characterize such a proceeding as in rem is to misstate the function of a court of equity and the nature of an equitable lien. Nor is the declaration of an equitable lien inconsistent with this Court's Order of Inclusion of December 24, 1968, whereby the transfer was ordered so that the operation of the New Haven properties might continue. The equitable proceeding which we request, is in the nature of an in personam proceeding directing specific performance of an outstanding obligation which was recognized and accepted by Penn Central throughout these proceedings.

II. Under Settled Principles of Equity Jurisprudence, an Equitable Lien Should Be Imposed in Favor of the New Haven on the New Haven Assets Transferred to Penn Central on December 31, 1968, Subject to the Further Review of Price and Terms of Inclusion.

In an effort to substantiate their claim that no equitable lien should be declared in favor of the New Haven interest on the New Haven assets, the Penn Central Trustees have presented (1) a summary of State cases under which equitable lien remedy may be denied to a vendor, (2) an argument that under State law, which is asserted by the

Penn Central Trustees to govern this situation, it is unclear whether an equitable lien can be asserted in at least two of the four relevant jurisdictions, and (3) the claim that other equitable considerations, in any event, preclude the declaration of an equitable lien on the New Haven properties.

It seems clear, however, that in the circumstances of this case, an equitable lien is the proper, and perhaps the sole, remedy available to this Court to assure that the New Haven interests will receive the fair and equitable compensation to which they are entitled under the Constitution and Section 77 of the Bankruptcy Act.

We assume arguendo that state law would define the ordinary situations in which a bankruptcy court may declare an equitable lien and the scope and effect of such a lien. We cannot, however, accept the Penn Central Trustees' effort to identify an equitable lien in the circumstances of this case with a so-called vendor's lien in an ordinary sale transaction.* In a leading

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* The comments of Judge Friendly in his oral opinion for the Three Judge Court, denying Penn Central's motion to stay so much of the Commission's Fourth Supplemental Report and Order as required Penn Central to take over the New Haven on or before January 1, 1969, make this distinction clear (New Haven Inclusion Cases, Appendix of Decisions, pp. 387-91a). As Judge Friendly noted, the management of a solvent company could rarely accept a transfer of its assets without knowing the full terms of sale, but this case was far different because the public interest in keeing the New Haven operations on-going compelled the Commission and the Courts to direct, and the parties perforce to accept, a transaction which was incomplete--and which, incidentally, had not even been submitted to the New Haven creditors for approval in the manner Section 77 contemplates.

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case, Westall v. Wood, 212 Mass. 540 (1912) the Massachusetts Supreme Court went to the heart of the nature of an equitable lien when it stated that

> "An equitable lien does not of necessity rest exclusively on an express agreement. It may arise from circumstances of such a nature as to require the presumption upon general considerations of justice as between those conducting commercial transactions according to a reasonable standard of integrity that an equitable lien was meant." (Id. at 544)

It is apparent from the circumstances surrounding the transfer of the New Haven properties to Penn Central that only this Court can preserve the integrity of Penn Central's obligation, voluntarily assumed, to pay whatever consideration the Commission and this Court might ultimately find fair and equitable.

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The doctrine of equitable lien was developed specifically to provide protection in cases where ordinary legal concepts and their applications were not adequate to protect vendors who are, by force of circumstances, required to surrender substantial interests in their own property.

The theory of equitable liens has its

> "ultimate foundation. . . . in contracts, express or implied, which either deal with or in some manner relate to specific property such as attractive land, particular chattels or securities, a certain fund and the like. It is necessary to divest one's self of the purely legal notion concerning the effect of such contracts and to recognize the fact that equity regards them as creating a charge upon or hypothecation of a specific thing by means of which the personal obligation arising from the agreement may be more effectively enforced than by a mere pecuniary recovery at law." Pomeroy, Equity Jurisprudence, Fifth Edition, Section 1234 at p.695; see also Hovey v. Elliott, 118 N.Y. 124, 130, 23 N.E. 475 (1890); Parlin & Orendorf Implement Co. v. Moulden, 223 Fed. 111 (1915).

As Pomeroy further noted in Equity Jurisprudence, id at p.695, the doctrine of equitable lien was "introduced for the sole purpose of furnishing a ground for the specific remedies which equity confers, operating upon particular identified property, instead of the general pecuniary recoveries granted by courts of law. . . ." (Emphasis supplied)

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Further, it is a fundamental proposition that an equitable lien is solely a creature of equity and is based on the equitable doctrine of unjust enrichment and on the right to have a fund or specific property applied to the payment of a particular debt. Caldwell v. Armstrong, 342 F.2d (1965); United States v. Adamant Co., 197 F.2d 1, cert. den. 344 U.S. 903 (1952); Cleveland Clinic Foundation v. Humphrys, 97 F.2d 849, cert. den. 305 U.S. 628 (1938).

Pursuant to this Court's broad powers of equity, this Court may, in its discretion, and in order to prevent unjust enrichment rely on the principle that

> "Where property of one person can by a proceeding in equity be reached by another as security for claim on the ground that otherwise the former would be unjustly enriched, an equitable lien arises." Restatement of the Law, Restitution §161, (Perm. Ed. 1937)

The Commission, the reviewing Court and the parties recognized that the transaction was not complete when the transfer occurred and that the obligations undertaken by Penn Central, as a precondition to its merger, to pay a fair and equitable price for the New Haven properties were not fully satisfied until the New Haven received the fair equivalent of what it had sold. The obligation of Penn Central is not in question here nor is it disputed

by the Penn Central Trustees. By its inherent power in equity, this Court has available to it a remedy not available at law, to assure that Penn Central's undertaking to pay that fair equivalent and thus compensate the New Haven interests for relinquishing the New Haven properties is made effective.

The potential for unjust enrichment of Penn Central if this Court does not act to impress an equitable lien on the transferred properties is manifest. Unless the Penn Central Trustees can demonstrate that the preponderance of equities rest with Penn Central or that the legal effects of this conditional transfer are such as to foreclose the exercise by this Court of its inherent power in equity, the circumstances of this transfer clearly dictate that an equitable lien should be imposed. Neither of these two conditions have - or, in our view, can be shown.

The Penn Central Trustees devote a considerable portion of their brief to an analysis of the legal concepts whereby a vendor's lien must either be expressly or impliedly reserved, or in the alternative, whereby a lien so reserved may be waived by the vendor in a transaction. The Penn Central Trustees disregard the well established principle that equity heeds substance rather than form.

> "If a transaction resolves itself to a security whatever may be its form and whatever name the parties may choose to give it, it is in equity a lien." Valley State Bank v. Dean, 97 Colo. 151, 47 P.2d 921 (1935); cf. Manfredi v. Manfredi, 12 N.J. Super. 207, 72 A.2d 331 (1951) (Emphasis supplied)

> "In the absence of an express contract, a lien based upon the fundamental maxims of equity may be implied and declared by a court of equity out of general considerations of right and justice as applied to the relationship of the parties and the circumstances of their dealings. One may by manifest intent and agreement create a security for the discharge of these obligations and another discharging such an obligation, if not a volunteer, has the right to look to the fund for repayment." Cleveland Clinic Foundation v. Humphrys, supra, at 856.

The Penn Central Trustees apparently go to some length to argue that only a vendor's lien is at issue here and that such a lien has been waived. It is therefore important to recognize that an equitable lien is not identical to a vendor's lien and that an express or implied waiver of a vendor's lien does not bar the right to an equitable lien. Blumin v. Ellis, 186 So. 2d 286 (1966); See also Bridgeport Electric & Ice Co. v. Meader, 72 Fed. 115 (1893).

Bridgeport involved a contract providing that the seller was to receive promissory notes for a portion of the purchase price, secured either by mortgage upon the machinery sold and the building and lands on which it

was erected, or by personal endorsement satisfactory to the seller. The seller later agreed to accept mortgage bonds as security for the notes. The notes were delivered, but not the mortgage bonds, and the buyer became insolvent. The seller brought suit to require the buyer to execute the mortgage or to declare a lien in its favor on the machine, building and land. The Court held that under the circumstances, there was no waiver of a right to the mortgage.

Similarly, in Blumin v. Ellis, supra, the sellers had agreed to take stock in payment of the purchase price. Upon failure of the buyer to tender that stock, the Court deemed that the intent was apparent to secure payment by a charge upon the assets transferred and an equitable lien was declared.

In the case of the New Haven, the transfer of the New Haven assets was predicated upon the power of the Commission and the courts to assure the New Haven the fair equivalent of what was being taken from it, i.e., the right to have the property sold parcel by parcel. On this premise, the New Haven was required to surrender its property and Penn Central to acquire it. After the inclusion, both the courts and the Commission acted to determine that the fair equivalence was, a task which was still incomplete when the Penn Central went into reorganization.

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Clearly, it cannot be said that the New Haven accepted what was delivered--or even the very substantial and extraordinary modifications which this Court required--as full compensation for the property it was required to transfer, and the Supreme Court has made it clear that the New Haven was correct in that position. The problem is that there has been a failure in the consideration to be supplied, and the courts must devise a means of curing that failure. Thus, there is here the same intent to secure the purchase price as was found by the court in Blumin, supra, and the temporary stop-gap which the Commission and the courts ordered--namely, consummation of the original "Purchase Agreement" as modified, with explicit reservation of jurisdiction to review the price and other terms,-- shows clearly that this Court was preserving jurisdiction and power to secure payment of the ultimate purchase price by a charge on the property.*

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* Clearly, no one has ever contended that the Commission and the courts were powerless after the transfer to modify the security interest of the New Haven in the property conveyed. Both the Court and the Three Judge Court, as well as the Commission ordered Penn Central to issue additional mortgage bonds to the additional value they found over and above the amount found in the Commission's Fourth Supplemental Report and Order Penn Central never appealed from the Three Judge Court's order and never questioned this Court's power to order a modification in the secured interest.

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The Penn Central Trustees seek to avoid this conclusion by asserting that, by virtue of the transfer "free and clear of all liens" this Court ordered in its order of inclusion as of December 31, 1968, this Court was making a "conscientious effort to negate any claim by the New Haven interests, to be asserted in the future, that an equitable lien should be declared." It is clear, however, that this language could only operate to remove the property transferred from prior liens and encumbrances upon the property. An equitable lien, by its very nature can only be asserted after transfer and upon the recognition by a court of competent jurisdiction that a transfer has been without adequate consideration, and that equity must act to preserve the consideration. Penn Central cannot argue that its obligation to pay fair consideration has not been firmly established, in the conclusions and orders of the Commission, this Court and the Supreme Court of the United States.

The Penn Central Trustees further assert on pp. 27-34 of their brief, that by virtue of the "free and clear" provision of the Order of Inclusion, as a matter of res judicata, any issue as to the reservation of an equitable lien, is foreclosed. But it is clear from the language of the Order of Inclusion that the transfer was

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in itself only part of a much larger transaction, over which this Court retained jurisdiction, including jurisdiction to determine the price and form of consideration to be given the New Haven interests in return for the release of their property. In addition, if the doctrine of res judicata can be said to be applicable here, it can only be that res judicata applies to the waiver to any claim of ownership of the New Haven interests in the property subject to the transfer. An equitable lien, on the other hand, is not an ownership interest in the property but is rather an assertion of a security interest in the property.

> "It [the equitable lien] does not entitle the holders [here the vendor] to a conveyance of the thing nor to its use; it is merely a right to secure the performance of some outstanding obligation by means of a proceeding directed against the thing which is subject to the lien." Pomeroy, Equity Jurisprudence, 5th Ed. §1234, p.604.

The Penn Central Trustees assert that there can be no intention by either party to create such a security because nothing in the Order of Inclusion reserved such a right by express agreement or implicit reservation. Further, the Penn Central Trustees assert that the Purchase Agreement entered into between the Pennsylvania and Central and the New Haven Reorganization Trustees provided for all the terms of the inclusion and thus a fortiori exduded an

implicit reservation of such an equitable interest. This contention disregards the consistent position of the First Mortgage Interests that that Agreement had no binding effect and did not fairly represent the consideration which should be received for the transfer of the New Haven properties; indeed, the Bondholders Committee sought to liquidate the properties and in that way realize on the mortgage liens. While the public interest was held to preclude liquidation, the Commission and the courts, in ordering immediate inclusion, recognized their obligation to secure the firm equivalent of liquidation value.

Nor, contrary to the assertion of the Penn Central Trustees at p. 27 of their Brief, has there been an "express and conscious" waiver of the right to assert an equitable lien. Such an express and conscious waiver can be said to exist only when the vendor has consented to rely solely on the personal obligation of the purchaser. See Blumin v. Ellis, supra. In this case, however, the transfer was one imposed by the public interest; the orders requiring immediate inclusion contemplated that the New Haven was to be compensated and protected, not by Penn Central's agreement, but by the expressly reserved

power of the Courts and the Commission to see to it they received the fair equivalent of what was transferred. In this regard, the Supreme Court statements in its decision on remand of the price issue cannot be over-emphasized:

> "It would be unfair and unequitable to allow Penn Central to take the properties for any lesser sum . . .[that sum being] the highest and best price for the assets of the debtor as at December 31, 1966." 389 U.S. at 92.

Further, the Supreme Court premised its "highest and best price" mandate on the basis of a hypothetical liquidation of the properties. Only through the declaration of an equitable lien can this Court comply with the mandate of the Supreme Court and ensure that the right to that liquidation value may be realized by the New Haven interests.

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III. There Is By Analogy to the Law of Eminent Domain Ample Precedent to Warrant Exercise of This Court's Power to Exercise its Equity Powers with Respect to the New Haven Properties Transferred on December 31, 1968.

While it is evident that the circumstances here are unique and warrant the equitable relief sought by the New Haven interests, this Court does not have to look far afield to arrive at strikingly similar fact patterns which have called for, and in which the courts have given, even more drastic equitable relief. In the evolution of the law of eminent domain, the courts have developed precisely the same analysis and accorded equitable relief as now sought by the New Haven interests.

The fundamental constitutional right in such condemnation proceedings is that just compensation must be paid to the owner by the authority condemning the property. The necessity for an appropriate quid pro quo has led courts to provide equitable relief either before or after the taking of the property, where the taker is unable to tender "just compensation". Furthermore, because of the overriding interest in promoting the public use to which the property is to be devoted, on many occasions the condemning authority, after an order of condemnation, has taken either title to the property or begun construction on the property before the amount of "just compensation" has been determined and the

amount paid. Yet even transfer of title or the beginning of construction and operation has not prevented the courts, where the authority is insolvent or about to become insolvent, from either re-investing title in the owner, Peerless Weighing & Vend.Mach. Corp. v. Public Bldg. Comm., 207 F. Supp. 877 (1962), or enjoining operation of the enterprise until payment has been made or provided for, Lee County v. Holden, 82 F. Supp. 353 (1949); U.S. v. Great Falls Mfg. Co., 112 U.S. 645 (1884); Hobbs v. State Trust Co., 68 F. 618 (1895); Nichols, Eminent Domain, Section 28.2, (3rd Ed. 1965) and cases cited therein.

In Peerless Weighing, supra, the financing provisions of the Illinois condemnation law were in question. The United States District Court for the Northern District of Illinois noted, in dicta. that

> ". . . nor can we share plaintiff's great worry that the Commission is not and will not be financially able to pay the condemnation judgment, . . . [A]s to the payment of the condemnation judgment, the law of Eminent Domain is clear in holding that title to property cannot be taken in all proceedings until compensation is paid. Should the title have passed and the required judgment payment not been made, then the landowner has the right to have the title revested and damage awarded for the trespassory taking." 209 F. Supp. at 883 (emphasis supplied)

In Hobbs v. State Trust Co., supra, an action brought in equity to determine the rights to certain property,

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the defendant railway company had instituted proceedings to condemn the land of the plaintiff and subsequently, a jury had fixed the compensation. The compensation assessed was not paid although the railway company had taken the property and proceeded to build a right-of-way. A compromise was arrived at under which the railway company agreed to pay a sum for the right-of-way which it had been using, but this was also not paid. The railway company argued that the right-of-way had been acquired under the condemnation proceeding and should be declared superior to any and all liens of the vendor, even though the compromise amount had not been paid. Rejecting this argument, the Court said:

> "If . . . it be taken for granted that by the proceedings of compromise he [plaintiff-owner] consented to convey title upon condition that the amount of compromise should be paid, it seems clear to us that when the amount was not paid he had a right to go into court of competent jurisdiction, assert his vendor's lien, and have the same foreclosed . . . At no stage of the proceedings does it appear that the [plaintiff] lost his superior vendor's lien on the land . . . even if it is not correct to hold, in view of the whole proceedings, that in equity [plaintiff-owner] never parted with the title but retained the same from the beginning." (68 F. Supp. at 672)

The decision of the court was premised on the concept that a condemnation proceeding is not completed until compensation has been paid, in that the taking of the property by the public authority for the public good must be conditioned upon tendering full and adequate payment and that the right

to have equitable relief cannot be precluded if the payment is not forthcoming. The District Court in Lee County v. Holden, supra, an application for an injunction against the use of property previously condemned until payment had been fully tendered, was called upon to determine whether the Highway Commission, the sole plaintiff in the former condemnation proceeding was the correct party to this suit or whether the county authorizing the condemnation and from whose funds the payment was to be made was the correct party. The Highway Commission argued that it had a complete and indefeasible interest in the condemned property, and that since payment to the individual was to be out of the county commission funds, the individual should look to the county for payment through an action for damages at law. The Court, however, rejected this argument, first finding that the Highway Commission had not obtained complete and indefeasible title, since that could not occur until full compensation had been paid or secured and that it could not be paid or secured until the amount thereof was ascertained. In addition, commenting on the seller's right to an equitable proceeding with regard to the property itself, the Court noted that

> "The conclusion to be drawn . . . is that the act of condemnation is not complete until the lands involved are actually taken over by the Commission. When the Commission undertakes to appropriate the lands covered by the order of condemnation, the owner thereof

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> has a right if the county's financial condition is such as to indicate that it does not have the means whereby to compensate him, to go into chancery and enjoin the appropriation of his lands until compensation is fixed and paid." 82 F. Supp. at 357.

The Court, in addition, viewed the taking under eminent domain authority and the payment of just compensation as being but two parts of a single transaction, one dependent upon the other, thus giving rise to the Court's equitable power to prevent the one in the absence of adequate and full provision for the other.

Nor has equitable relief been granted only in the federal courts. In Stolze v. Milwaukee & L.W.R., 104 Wisc. 47, 80 N.W. 68 (1899), it appeared that after a railroad had instituted proceedings for the condemnation of a right-of-way and an award of compensation had been made to the landowner, it entered upon the premises after having deposited the amount of the award in court, and began work notwithstanding the fact that the landowner had appealed from the award as being grossly inadequate. After a judgment was entered providing for much greater compensation, the railroad became insolvent; it was held by the Court that since operation of the railroad over the right-of-way was conditioned upon the receipt by the landowner of the compensation, as it would be finally ascertained, equity should restrain the operation of the railroad on that property

until the full and final judgment was paid. See also Evans v. Missouri, I. & N. R., 64 Mo. 453 (1877); White v. Nashville & N.W.R. Co., 7 Tenn. 518 (1872). In Provolt v. Chicago R.I.&P. R. Co., 69 Mo. 633 (1879), the land of the complainant had been condemned for use by a railroad and had been entered upon by that railroad pending his appeal from the assessment of damages; the Court held that since (1) the statutory methods of relief had proven fruitless, (2) the executions of the complainant had been returned unsatisfied and (3) the condemnor-railroad appeared to be insolvent the complainant would be entitled to an order restraining the condemnor from operating the railroad on his land, regardless of the fact that the land was already in use by the railroad.

From the above, the remarkable similarity of the eminent domain cases to the present proceeding is readily apparent. The need for equitable relief in both instances rests on the recognition that a party is being forced to transfer to the buyer in the public interest before he receives his full compensation. The transfer of title to the New Haven properties to Penn Central on December 31, 1968 was a stop-gap measure necessitated by the public interest pending determination of fair and equitable consideration. Even the actual use and development of the

properties in the latter cases and the transfer of title, has not prevented the courts from recognizing the individual's right to concurrent payment of just compensation for the property and exercising its equitable power to make those rights effective.

We do not deny that title has passed to Penn Central or argue that title should be revested in the New Haven estate until final determination of the form of consideration to be paid for the New Haven properties is made. It is submitted, however, that this Court is now in a position to complete the transaction by which the transfer to the Penn Central of the New Haven properties was made, that is, by providing a means for securing satisfaction of the obligation deemed to be concurrent at the time and now fixed, by declaring an equitable charge on those properties (and on the proceeds of sale of any of such properties) until provision for payment of the obligation is made.

Conclusion

By reason of the foregoing, and of the matters expressed in the previous statements of position filed herein on behalf of the New Haven interests, we respectfully submit that this Court has ample power to declare an equitable lien upon the properties of the New Haven transferred to Penn Central on December 31, 1968, for the

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balance of the consideration due from Penn Central, and should order such a lien imposed, in order to effectuate the mandate of the Supreme Court that the New Haven should receive the fair equivalent of the property transferred.

With respect to the other questions raised in this Court's Order of August 10, 1970, we respectfully refer to our prior statements of position.

Dated: New York, New York
January 26, 1971

Respectfully submitted,

SIMPSON THACHER & BARTLETT
Attorneys for Manufacturers
Hanover Trust Company as
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Of Counsel.

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IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor. } No. 30226

PETITION OF MANUFACTURERS HANOVER TRUST COMPANY AND A. FREDERICK KEUTHEN TO RESIGN AS CORPORATE TRUSTEE AND INDIVIDUAL TRUSTEE, RESPECTIVELY, UNDER THE FIRST AND REFUNDING MORTGAGE OF THE DEBTOR AND FOR THE APPOINTMENT OF A SUCCESSOR TRUSTEE OR TRUSTEES.

Manufacturers Hanover Trust Company and A. Frederick Keuthen, as Corporate Trustee and Individual Trustee, respectively, under the First and Refunding Mortgage of the Debtor, respectfully represent:

1. Manufacturers Hanover Trust Company (the "Trust Company") is the Corporate Trustee and A. Frederick Keuthen is the successor individual trustee (collectively the "Petitioners") under the First and Refunding Mortgage of the Debtor dated

July 1, 1947 (the "Indenture"), the Corporate Trustee having acted in such capacity since July 1, 1947 and the individual trustee having acted in such capacity since October 7, 1953.

2. The Trust Company is both an unsecured and a secured creditor of Penn Central Transportation Company ("Penn Central"), the Debtor in Proceedings for the Reorganization of a Railroad (No. 70-347) in the United States District Court for the Eastern District of Pennsylvania and is also the holder of certain equipment obligations of Penn Central which have been assumed by the trustees of its property. It is also the holder of certain equipment obligations issued by corporations in which Penn Central owns stock. In addition, the Trust Company is the Trustee under a number of mortgages on property owned by Penn Central and affiliates. The Trust Company's position as a secured creditor is the result of its having been one of the banks which made advances to Penn Central in the total principal amount of $300,000,000 pursuant to Credit Agreement dated as of April 1, 1969, which advances were secured by the pledge by Penn Central of all the outstanding Common Stock of Pennsylvania Company, its wholly-owned investment subsidiary. The Penn Central Trustees have recently announced that agreement in principal has been reached with the banks under said Credit Agreement for the settlement of the claims involved.

3. The Trust Company is also a creditor of Pennsylvania Company as the result of being one of several banks which made advances aggregating $50,000,000 pursuant to Credit Agreement dated as of March 2, 1970. Subsequent to the filing by Penn Central on June 21, 1970 of its Petition for reorganization, the Trust Company has also joined with other banks in making loans to Great Southwest Corporation, a subsidiary of Pennsylvania Company.

4. Because of the foregoing, conflicting positions have resulted and others will result in the future as between (a) the position of the Trust Company, in its individual capacity, as a creditor of Penn Central and its position as Trustee under the Indenture and (b) the position of the Trust Company, in its

capacity as trustee under the Indenture, and its capacity as trustee under the various Penn Central mortgages. While these conflicts have remained largely latent, the situation will probably change as the result of the order of Judge Anderson referred to below.

Consequently, the Petitioners believe that this is an appropriate time for them to resign since on June 11, 1971 Judge Anderson handed down his decision on the remand and mandate of the Supreme Court of the United States in the New Haven Inclusion Cases decided June 29, 1970 (399 U.S. 392) and on June 22, 1971 is expected to enter an order herein remanding the proceedings to the Interstate Commerce Commission upon the conditions therein stated. The Corporate Trustee participated in the Valuation Cases and its counsel argued its position before the United States Supreme Court. It also participated in the subsequent proceedings before Judge Anderson which resulted in the decision of June 11, 1971. Since undoubtedly there will be additional proceedings before the Interstate Commerce Commission, and, probably, before the United States Court of Appeals for the Second Circuit, it would seem that this is a convenient time for a successor trustee to begin his duties.

5. The First and Refunding Mortgage provides (Article Eleven, Section 1) that either trustee or any successor trustee may resign at any time and be discharged from the trusts created by the Indenture by giving written notice of such resignation to the Railroad Company, i.e. the Debtor herein. The Indenture also provides (Article Twelve, Section 5) that every successor to the Corporate Trustee shall be a trust company or a banking corporation organized under the laws of the United States or the State of New York having an office in the Borough of Manhattan, City and State of New York, and a capital and surplus aggregating at least $5,000,000 "if there be such a trust company or a banking corporation able and willing to act". Copies of the pertinent provisions of the Indenture are annexed hereto and made a part hereof.

6. The Trust Company has made a determined effort to find a trust company or a bank willing to act as its successor but without success. Its efforts have not been limited to a national bank or a New York banking corporation having an office in the Borough of Manhattan, City of New York, as the Indenture provides, but its search has included trust companies in the New York and New England area as well. Specifically, officers of the Trust Company have approached the representatives of at least two banks in New Haven, one in Bridgeport and three in Boston, as well as banks in New York City and other cities in the State of New York. Various banks in New England were not asked to act as successor for the reason that at least six banks in the area which otherwise would have been approached were known by the Trust Company to be creditors of Penn Central and hence, presumably, disqualified. In addition, the Trust Company in the summer and fall of 1970 approached a substantial number of banks in the larger cities of the United States east of the Mississippi River and also approached banks in the New York area in an effort to find successor trustees to act under its Penn Central mortgages. Not one bank or trust company was found which was willing to act as successor trustee under the Trust Company's Penn Central mortgages. It is assumed that none of them would have been willing to act as successor trustee under the Indenture. The Trust Company is also informed that other banks have experienced the same difficulty in their efforts to find successors under other Penn Central mortgages and that this is a problem which has been presented formally to the Reorganization Court in the Penn Central Reorganization proceedings by at least one New York City Trust Company.

7. The individual trustee retired as a Vice President of the Trust Company on November 29, 1968 and in normal course at that time would have asked to be relieved of his duties under the Indenture. However, since most of the duties and responsibilities are placed by the Indenture upon the Corporate Trustee (Article Twelve, Section 02) and in view of the pending reorganization proceedings, the individual trustee was asked to re-

main in office at least for a limited time. In the circumstances, the Petitioners believe that it is appropriate that the individual trustee should also resign at this time.

8. The Trust Company has been advised by its counsel that inasmuch as it appears to be impossible to find a successor to the Corporate Trustee meeting the qualifications of the Indenture or, for that matter, to find any bank or trust company wherever located to act as successor Corporate Trustee, this Court has the power to appoint an individual as such successor and that such successor could act both as successor to the Corporate Trustee and to the individual trustee.

9. The Petitioners believe that their resignation at this time will not be in any way detrimental to the interests of the trust mortgage bondholders. In this connection, it seems appropriate to note that they have acted since the reorganization proceedings began July 7, 1961 and that they believe the bondholders' interest have in all respects been fully protected by those acting for the bondholders including, of course, the Petitioners, the Trustees of the Debtor, the First Mortgage P.C. Bondholders Committee and others. The Petitioners might also note that their services in connection with the reorganization since July 7, 1961 have been without compensation, although the Corporate Trustee has been compensated annually on a fee schedule established in 1961 or earlier for the routine work performed in connection with the transfer of bonds, payment of coupons, etc.

WHEREFORE, Petitioners respectfully pray that an order be entered herein:

(1) prescribing the manner and notice of hearing to be held on this petition and fixing a time and place for such hearing;

(2) authorizing the Petitioners to resign and be discharged from the trusts created by the Indenture with the right being reserved to the Petitioners to apply herein at a later date for compensation and for reimbursement of expenditures, all as provided in Section 77 of the Bankruptcy Act and in the Indenture;

(3) appointing a successor trustee or trustees herein, such appointment to take effect upon the effective date of the resignation of Petitioners; and

(4) granting such other further relief as this Court may deem appropriate.

MANUFACTURERS HANOVER TRUST COMPANY
As Corporate Trustee
By F. W. KALSTNER
Senior Vice President

June 21, 1971

(Provisions Of The Indenture Omitted In Printing)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

F. W. KALSTNER, being duly sworn, deposes and says: that he is a Senior Vice President of Manufacturers Hanover Trust Company, the corporation named in the foregoing Petition; that he has read the foregoing Petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated upon information and belief, and that as to those matters he believes to be true.

F. W. KALSTNER

Sworn to before me this 21st day of June, 1971.

(NOTARIAL SEAL)

DOMENICA MAZZOLA
Notary Public

STATE OF NEW JERSEY)
COUNTY OF MORRIS) ss.:

A. FREDERICK KECTHEN, being duly sworn, deposes and says that he is the individual trustee named in the foregoing Petition; that he has read the foregoing Petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated upon information and belief, and that as to those matters he believes it to be true.

A. FREDERICK KECTHEN

Sworn to before me this 21st day of June, 1971.

(NOTARIAL SEAL)

ELIZABETH M. HESLIN
Notary Public

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U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

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In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	No. 30226

NOTICE OF APPEAL

Notice is hereby given that Manufacturers Hanover Trust Company, as Trustee under The New York Central and Hudson River Railroad Company Gold Bond Mortgage dated June 1, 1897, hereby appeals to the United States Court of Appeals for the Second Circuit from the order entitled "Order of Remand on Judgment of Supreme Court in the New Haven Inclusion Cases" entered in these proceedings on June 22, 1971.

KELLEY DRYE WARREN CLARK CARR & ELLIS
Attorneys for Manufacturers Hanover Trust Company, as Trustee under The New York Central and Hudson River Railroad Company Gold Bond Mortgage dated June 1, 1897

By Frank H. Heiss
Frank H. Heiss

Dated: July 29, 1971
350 Park Avenue
New York, New York 10022

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- -x

IN THE MATTER OF THE NEW YORK, : Bankruptcy

NEW HAVEN & HARTFORD RAILROAD COMPANY : 30,226

- -x

July 29, 1971
New Haven, Connecticut

B e f o r e: Hon. ROBERT P. ANDERSON U.S.C.J.

A p p e a r a n c e s:

Professor JAMES MOORE
Counsel for Trustee
NY, NH & Hartford Railroad
54 Meadow Street
New Haven, Connecticut

SIMPSON, THACHER and BARTLETT
1 Battery Park Plaza
New York, New York
By: ALBERT X. BADER, Esq., of Counsel

HARRY LANDER, Esq.
New Haven, Connecticut

ROBERT WECHSLER, Esq.
750 Summer Street
Stamford, Connecticut

SAMUEL KANELL, Esq.
Deputy Transportation Commissioner
Connecticut Department of Transportation
60 Washington Street
Hartford, Connecticut

PROF. MOORE: I think we may as well take up the motions in order. On the Manufacturers Hanover Trust petition, I hand up an affidavit giving notice by mail not only as to this petition, but also as to the next one, 648, on the per diem claims with Mopac, and Mr. Bader will put in an affidavit of publication on the Manufacturers petition and then proceed with that, if you please, sir.

THE COURT: Very well.

MR. BADER: I hand up an affidavit of the publication of the Wall Street Journal and an affidavit of publication of the -- in the New Haven Journal-Courier of the notice that was provided for in your order of notice. I will ask you to find that notice was given in accordance with the requirement of the order of notice.

THE COURT: This is a prelude to your swan song.

MR. BADER: I guess so, sir. It is not without regret that I have to say that.

THE COURT: I am sorry, too, but I understand the situation and I think it unfortunate that it was necessary.

I will find notice was given in accordance with the order of notice for both the petition of Manufacturers Hanover Trust Company and for Frederick Keuthen to resign

as Trustee, and also order for petition Order 648.

MR. BADER: I have a witness at the request of Counsel to the reorganization trustee, I would like to call Mr. Robert Byrne.

THE COURT: Very well.

R O B E R T A. B Y R N E, of 35 Elliott Road, Great Neck, New York, called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BADER:

Q Are you employed by Manufacturers Hanover Trust Company, Mr. Byrne?

A I am.

Q In what capacity?

A I am Vice-president in Charge of the Corporate Trust Department.

Q I show you a copy of a petition of Manufacturers Hanover Trust Company and a Frederick Keuthen, who resigned as Corporate Trustee and Individual Trustee, respectively, under the first and refunding mortgage of the debtor and for the appointment of a successor trustee or trustees. Are you familiar with the contents of that petition?

A I am.

Q Are the statements therein contained true and complete to the best of your knowledge and information?

A They are.

Q I refer you to Paragraph 6 of the petition. Were the activities or efforts of Manufacturers Hanover referred to in that paragraph carried on by you or persons acting under your instructions?

A Yes.

Q Would you state in detail the efforts that Manufacturers Hanover Trust Company has made to obtain a successor corporate trustee under the debtor's first and refunding mortgage?

A I personally called the heads of the corporate trust departments of five major banks in New York who were not involved either as a lender in the Penn Central proceedings or didn't have some relationship with either the Penn Central or the New Haven previously. These included the Schroder Trust Company, the Bank of New York, the Bank of New York America, the Franklin National Bank and the Sterling Bank and Trust Company. Each of these five banks declined to accept or even indicate any kind of interest in assuming the successor trusteeship under the first and refunding mortgage.

I didn't call or get in touch with either First National City Bank or Mogan Guaranty, the Bankers Trust Company or Irving because of their Penn Central involvement, and I didn't contact the Chase Manhattan Bank because they are trustee of the

general mortgage bonds, as you know.

Of the remaining banks in New York, I didn't call them because they don't have corporate trust departments, and among these are the American Bank and Trust Company, the Atlantic Bank in New York, the Bank of Commerce, the Republic National Bank and Freedom National Bank. There is no point in contacting them because they didn't have the capability to accept the mechanics of acting as trustee.

Q You didn't contact U. S. Trust for a reason?

A We didn't contact U. S. Trust because they have the Harlem River mortgage, and an involvement in the Penn Central situation.

Q With respect to banks outside of New York, what efforts were made?

A In connection with banks outside of New York, officers of our National Division, who have primary contact with correspondent banks, contacted the banks in New Haven, the two banks that didn't have any involvement again in the Penn Central proceeding, the First New Haven National and the Second National. Both of those declined to act.

We also contacted through the National Division officer City Trust Company of Bridgeport, and they did not want

the appointment.

In Boston we got in touch with the First National Bank of Boston, the New England Merchants National, the State Street Bank and Trust Company, and neither of these three organizations were interested in acting as successor.

That essentially took care of New England, and through our other officers and --

THE COURT: How about Hartford?

THE WITNESS: Well, both the Connecticut National -- Connecticut Bank and Trust Company in Hartford and Hartford National Banks are participating in the -- participants in the loan to the Penn Central. We didn't contact them for that reason.

A. The banks in the other parts of the country, we contacted not only banks east of the Mississippi from St. Louis east, Chicago east, Miami north and received no indication of interest of any bank to accept this appointment.

Q. You refer in that paragraph in your petition to efforts previously made by the bank to find a successor trustee with respect to its mortgage on the Gold Bond mortgage on New York Central.

A. That's right.

Q Would you describe those?

A Here, again, we went through the same procedure. We contacted through our National Division officers, who have almost daily contact with our correspondent relationship banks throughout the country, we contacted over 62 banks, again, mainly east of the Mississippi, and to see whether we could find any of those banks who would indicate an interest in taking over our responsibilities as trustee under the Central mortgages, and here, again, we found no one who was interested, if they had the qualifications.

Q Does Manufacturers Hanover Trust Company perform any functions for the New Haven other than as corporate trustee for the first and refunding mortgage?

A In connection with our trustee appointment, we also perform ministerial duties which are required under the indenture, we act as bond registrar, transfer the bonds upon presentation. We also would, if there were anything available, act as paying agent, disburse interest, which we used to have prior to 1961.

Q Is Manufacturers Hanover Trust Company willing to continue to perform those functions?

A Yes, we are.

MR. BADER: That completes my direct examination.

THE COURT: Anyone wish to examine this witness?

CROSS EXAMINATION

BY PROF. MOORE:

Q From now on, Mr. Byrne, in relation to the trustee's duties, do you regard those mainly as legal or of some other character, that is; let me put it somewhat differently, if the trustee has legal counsel, as you do, would you expect that most of the problems, work and so on, would be by counsel in connection, of course, with the trustee that would be appointed in making presentations to the I.C.C., this Court and other Courts?

A I would, yes.

PROF. MOORE: That's all, your Honor.

THE COURT: Anybody else?

BY THE COURT:

Q I take it your conclusion from your general contact with banks and correspondence with banks is that it is not at all feasible to attempt any further search?

A I don't think so, your Honor. I think thoroughly we canvassed all the prime prospects. In fact, maybe even going down the second line a little bit. I just don't think you will find a bank that would be willing to accept this.

BEST COPY AVAILABLE

Q Even if a bank was -- of these banks that you contacted that were not strictly disqualified, nonetheless, they were not interested in doing it?

A No, they weren't, and, of course, really the corporate trust business is a speciality. Mostly it is a large city oriented type of business, and when you get out of Boston, Philadelphia, New York, Chicago, major money centers, the banks just don't have the expertise to perform the duty, administerial as it may be.

Q Perhaps for that reason they may not want to take it, anyway?

A I think so.

THE COURT: You may stepdown.

(Witness excused.)

MR. BADER: I have prepared a form of order which I have shown to trustee's counsel which I ask leave to hand up.

THE COURT: On the evidence submitted I will find that it is not reasonably possible to enlist the services of a bank to perform the duties of the trustee ad they have been carried on by Manufacturers Hanover, and for that reason the Court will have to

appoint an individual trustee.

I take it that -- I want to be sure that there would be an account filed by the Manufacturers Hanover --

MR. BADER: That's provided in the proposed order.

THE COURT: I see it is, so I think that's all right. I am not sure whether other parties here have seen copies of the proposed order.

MR. BADER: The parties present in the court, who I thought had an interest, is the only party, I have shown it to several other individuals who are here, but I don't think anyone who has appeared --

PROF. MOORE: Mr. Lander, who is on the bondholders' protective committee.

MR. LANDER: Harry Lander.

MR. BADER: I'm sorry. I should note, and you may want to know in that connection, you may want a statement of Mr. Byrne's, in addition to the notice provided in the order of notice, we mailed notice of this proceeding to every bondholder who was identifiable, every registered bondholder of the New Haven of this issue.

THE COURT: Very well.

MR. BADER: I have talked to New York counsel for

the committee, your Honor, and Mr. Pollack of the Migdal, Low firm indicated he had no intention of appearing today and did not oppose the application.

THE COURT: Very well. I am assuming Mr. Byrne agreed with your statement as to the mailing?

MR. BYRNE: Yes, sir, not only to the registered bondholders, but, as Mr. Bader said, all known bondholders that are on our list.

THE COURT: Thank you. I will grant the petition and I will appoint as successor trustee Attorney Lawrence Iannotti of Hamden. Mr. Iannotti, insofar as counsel is concerned, as you are attorney in a firm of New Haven, I am sure you are well qualified to carry on, that they would act as your counsel.

MR. IANNOTTI: I would hope so, your Honor.

THE COURT: I will approve that. I will fix bond in the more or less nominal sum of $10,000.00 with surety.

What is your middle initial, Mr. Iannotti?

MR. IANNOTTI: W.

THE COURT: I understand that Manufacturers Hanover is willing to continue its custodial and administerial duties as before?

MR. BYRNE: Yes.

THE COURT: Very well. I guess that's all on that petition.

PROF. MOORE: That's all as far as we are concerned.

THE COURT: Does anybody else have anything to add to it?

We will go on to the next matter.

PROF. MOORE: The next matter is the petition for authority to settle per diem claims with the Missouri Pacific Railroad Company and other railroads that are within the Mopac system. The affidavit of giving notice has been filed and your Honor has already found that due and adequate notice has been given.

THE COURT: Yes.

PROF. MOORE: This petition for settlement follows the one that we have been making. All told, if you had the post and pre-per diem claims of the Mopac system, they come to almost $800,000.00. The postreorganization claim of Mopac is $543,000.00 odd. At the AAR rates, and under the proposed settlement, we are settling that for $187,625.15, and as a part of the settlement the prereoganization per diem

they are proper and may be granted.

PROF. MOORE: That completes the calendar.

THE COURT: Anybody else have any matter to bring before the Court at this time?

If not, we will declare ourselves adjourned.

Before I do, this is the last appearance of Mr. Bader. I do want to say that we will miss seeing him and Mr. McAfee. I feel they have been of great aid to the Court and have handled their duties with great diligence and skill from the beginning, and we will be sorry to see you go, but as I said before, I understand the situation and agree that it is necessary.

MR. BADER: Let me say that it has been a great personal privilege for me to have the opportunity to have served in this case, both as counsel and also the privilege of working with you, sir.

THE COURT: Thank you.

(Court adjourned at 11:30 a.m.)

Order No. 650

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	No. 30226

The Petition of Manufacturers Hanover Trust Company and A. Frederick Keuthen to resign as Corporate Trustee and Individual Trustee, respectively, under the First and Refunding Mortgage of the Debtor and for the appointment of a successor trustee or trustees, having come on for hearing which was duly noticed pursuant to order of this Court, including publication in The New Haven Journal Courier and The Wall Street Journal, and all parties in interest having been heard or given opportunity to be heard, and the Court being duly advised in the premises it is ORDERED that:

1. The Petitioners are hereby permitted to resign as Corporate Trustee and Individual Trustee, respectively, under the First and Refunding Mortgage of the Debtor and the petition of said trustees is treated and is hereby accepted as their resignation, effective on the date hereinafter specified.

2. Upon the effective date of their resignations, the Petitioners shall be discharged from the trusts created by the First and Refunding Mortgage of the Debtor, subject only to the requirement that they file, within 90 days from the date hereof, an account

of their proceedings since July 7, 1961, for the approval of this Court, and the approval of such account by this Court shall relieve the Successor Trustee appointed by this Order of any duty to inquire into the proceedings of the Petitioners as Corporate Trustee and Individual Trustee, respectively, of the trusts created by the First and Refunding Mortgage of the Debtor.

3. The Petitioners shall have the right to apply herein at a later date for reimbursement of their unpaid compensation and expenses, all as provided in the First and Refunding Mortgage and in Section 77 of The Bankruptcy Act; and until the amount of such compensation and expenses is finally fixed, determined and paid, the Petitioner Manufacturers Hanover Trust Company shall hold such funds as remain in its hands, as shown by Petitioners' account and approved by this Court, as stated above, subject to the further order of this Court.

4. Lawrence W. Iannotti of Hamden, Connecticut is hereby appointed Successor Trustee under the First and Refunding Mortgage, such appointment to become effective on the date hereinafter specified.

5. Within 30 days after the date hereof, the Successor Trustee shall simultaneously (a) execute and file with the Clerk of this Court a bond in the amount of $10,000 with sureties approved by the Court, for the benefit of whom it may concern, conditioned to the effect that he will well and truly perform the duties of Successor Trustee and duly account for any monies and properties which may come into his hands and abide by and perform all things which he shall be directed by the Court to do, (b) execute, acknowledge and file with the Clerk of this Court an instrument in writing accepting the appointment as Successor Trustee, and (c) file an executed counterpart of such instrument of acceptance with Manufacturers Hanover Trust Company, the date of such filing with the Clerk of this Court to be the effective date of the resignation of the Petitioners herein and the effective date of the appointment of the Successor Trustee.

6. Upon the effective date of the appointment of the Successor Trustee, without any further act, deed or conveyance, he shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of his predecessor in trust under the First and Refunding Mortgage of the Debtor, with like effect as if originally named therein as trustee.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

Dated: July 29, 1971.

A 1 1 8

Petition No. 661

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	Account of Trustees under First and Refunding Mortgage. No. 30226

THE HONORABLE ROBERT P. ANDERSON
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT:

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1. The undersigned, Manufacturers Hanover Trust Company, a New York banking corporation, having its corporate trust office at No. 40 Wall Street, in the Borough of Manhattan, City, County and State of New York, as Corporate Trustee and A. Frederick Keuthen, residing at 15 Laurel Way, Madison, New Jersey, as successor Individual Trustee (collectively, the "Trustees") under the First and Refunding Mortgage of the Debtor dated July 1, 1947 (the "Indenture") do hereby render an account of their proceedings as such Trustees for the period from July 7, 1961 to and including the date hereof.

2. The Corporate Trustee has acted as such under the Indenture since its date of execution and delivery, which date in effect marked the termination of the previous reorganization of

the Debtor. The Individual Trustee has acted in such capacity since October 7, 1953 at which time he succeeded Frederick E. Lober, the first individual trustee to act under the Indenture.

3. Because of its position as both an unsecured and a secured creditor of Penn Central Transportation Company ("Penn Central"), the Debtor in Proceedings for the Reorganization of a Railroad (No. 70-347) in the United States District Court for the Eastern District of Pennsylvania and also because of its being a holder of certain equipment obligations of Penn Central and Penn Central affiliates as well as its position as trustee under a number of mortgages on property owned by Penn Central and affiliates, the Corporate Trustee petitioned this court on June 21, 1971 for an order authorizing the Trustees to resign and be discharged from the trusts created by the Indenture. The Individual Trustee joined in the pettion. A hearing was held on said petition on July 29, 1971 upon notice to all parties customarily notified of hearings in these proceedings and upon publication thereof as specified in the order of notice. Under date of July 29, 1971, the Court (the Honorable Robert P. Anderson, United States Circuit Judge, Sitting by Designation) entered an order (Order No. 650) appointing Lawrence W. Iannotti as Successor Trustee under the Indenture and permitting the petitioners to resign as Corporate Trustee and Individual Trustee, respectively, under the Indenture. Said order provided that within 90 days from the date thereof, the Trustees should file an account of their proceedings since July 7, 1961, for the approval of the Court, and this account is filed pursuant thereto.

4. The interest payment due under the Indenture on the First and Refunding Mortgage bonds (the "Bonds") which became due July 1, 1961 was not paid and on July 7, 1961, the Debtor filed herein its petition which was approved as properly filed on said date (Order No. 1). At that time, the Trustee held as collateral under the Indenture the securities listed in Schedule I attached hereto.

5. On December 27, 1968, the securities listed in Items "1", "2", and "3" of said Schedule I, being the capital stock of The

Pullman Company, REA Express and South Manchester Railroad Company were delivered by the Corporate Trustee to the Debtor and by the Debtor to Penn Central Transportation Company upon the acquisition by the latter of substantially all of the Debtor's assets pursuant to Order No. 559 of this Court. The common and preferred stock and the First Mortgage 5% Gold Bonds due May 1, 1934, extended to May 1, 1954, of The New England Steamship Company, referred to on pages 24 and 25 of the Indenture, were released from the lien of the Indenture on September 24, 1953 upon the payment to the Corporate Trustee of $727,116.49. The 150 shares of the stock of Soundview Transportation Company, Incorporated (page 24 of the Indenture) was released from the Indenture on March 1, 1948 upon payment of $17,000. The Demand Note of William J. du Wors (Item No. 6) was released from the Indenture on November 27, 1961 and turned over to the Trustees of the Debtor for collection. The Note (non-interest bearing) and Mortgage of Rabson Realty Corporation (Item 7 of Schedule I) was released from the Indenture on May 1, 1963 after various payments to the Corporate Trustee totalling $22,000.

6. The Mortgage and Note of Providence Produce Warehouse Company (Item 4 of Schedule I) and the Note and Purchase Money Mortgage of Produce Terminal Realty Co. (Item No. 5 of Schedule I) were delivered to the Court herein for deposit in its registry on July 16, 1969 pursuant to Order No. 74, the effective date of the Produce Terminal Realty Corp. transaction having been November 12, 1968. Receipts of the Court showing the deposit in the registry of the Court of various amounts payable on these Notes as principal and interest were received by the Corporate Trustee during the period October, 1963 through January, 1969 and are now held by it.

7. On July 7, 1961, there was on deposit with the Corporate Trustee in an account entitled "Release Account—Principal" the sum of $48,461.80 representing the proceeds of the release of property from the lien of the Indenture up to that time. During the period July 7, 1961 to and including July 1, 1963, the Cor-

porate Trustee received various amounts representing principal payments on various purchase money mortgages and notes deposited with it as consideration for property released prior to the date of bankruptcy. Subsequent to July 1, 1963, all further payments on these purchase money mortgages and notes were deposited in the registry of the Court pursuant to said Order No. 74. The present amount held in this account is $324,182.29, all of which appears in Schedule II annexed hereto.

8. On July 7, 1961, an account was created entitled "Release Account—Income" into which all interest on purchase money mortgages and notes held in lieu of released property was deposited as well as any income earned on investment of funds on deposit with the Corporate Trustee. From February 1, 1962 to date, the Corporate Trustee has periodically invested release funds in its possession, all as appears under the headings "Income" and "Description" in said Schedule II. At the present time, the funds from both the "Release Account—Principal" and "Release Account—Income" are invested in a Certificate of Deposit due November 8, 1971, which Certificate bears interest at the rate of 5.75% per annum and was purchased at a total cost of $549,708.16.

9. Of the various investments made during this period, there were 19 investments in U. S. Treasury Bills, 8 investments in Bank Certificates of Deposits and 2 investments in Commercial Paper of Corporations approved by the Court. While the Corporate Trustee actually makes the investments and keeps the securities in its vault as collateral under the Indenture, the instructions for each of the investments has come from the Trustees of the Debtor. The two investments in Commercial Paper were specifically authorized by this Court (Order No. 599; see also Order Nos. 116 and 367) to permit the Debtor to take advantage of the higher yields received on such an investment.

10. As appears from Schedule III hereto, the Corporate Trustee (as Paying Agent) held $153,816.00 on July 7, 1961 representing funds for interest coupons due January 1, 1961 and

prior thereto which had matured but which had not at that time been presented to the Corporate Trustee for payment. Since that date, various coupons have been presented and have been paid. As of October 20, 1971, the Corporate Trustee had on deposit $96,958 to cover these obligtions.

11. The Corporate Trustee has advanced for the account of the Trust Estate a total of approximately $195,000. This amount includes, among other things, fees paid to expert witnesses, cost of stenographic transcripts, printing of briefs and records, publication of notices, travel expenses and one advance made to Trustee's counsel on July 25, 1967. In the near future, the Trustees expect to file with the Court and with the Interstate Commerce Commission an application for reimbursement of these expenses as well as for compensation for their services rendered in connection with the Reorganization of the Debtor.

The attached Schedules, which are severally signed by the Corporate Trustee and the Individual Trustee, are part of this account.

New York, N. Y.
October 26, 1971

Manufacturers Hanover Trust Company,
As Corporate Trustee
By R. A. BYRNE,
Vice-President
A. FREDERICK KEUTHEN,
Individual Trustee

(Schedules omitted in printing)

8864

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor	Account of Trustees under First and Refunding Mortgage. No. 30226

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

A. Frederick Keuthen being duly sworn, deposes and says:

1. He is the Individual Trustee under the First and Refunding Mortgage of the Debtor dated July 1, 1947.

2. That the Schedules of the assets of the Trust Estate reported by the Corporate Trustee and the Individual Trustee are true and complete and include all money and property of any kind, and all increment thereon, which have come into the hands of the Corporate Trustee and the Individual Trustee during the period covered by the Account; that all receipts and disbursements are correctly and fully reported and scheduled; that he does not know of any error in the Account or in any schedule thereof; and that he does not know of any matter or thing relating to the Trust Estate omitted therefrom to the prejudice of the rights of any holder of the First and Refunding Mortgage Bonds of the Debtor.

A. FREDERICK KEUTHEN

Sworn to before me this 26th day of October, 1971.

KATHLEEN COSTINE
Notary Public

Kathleen Costine, Notary Public, State of New York, No. 31-5832352 - New York. Qualified in New York County. Certificate filed in New York County. Commission Expires March 30, 1972.

8866

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	Account of Trustees under First and Refunding Mortgage. No. 30226

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

R. A. Byrne being duly sworn deposes and says:

1. He is a Vice President of Manufacturers Hanover Trust Company, the Corporate Trustee under the First and Refunding Mortgage of the Debtor dated July 1, 1947.

2. That the Schedules of the assets of the Trust Estate reported by the Corporate Trustee and the Individual Trustee are true and complete and include all money and property of any kind, and all increment thereon, which have come into the hands of the Corporate Trustee and the Individual Trustee during the period covered by the Account; that all receipts and disbursements are correctly and fully reported and scheduled; that he does not know of any error in the Account or in any schedule thereof; and that he does not know of any matter or thing relating to the Trust Estate omitted therefrom to the prejudice of the rights of any holder of the First and Refunding Mortgage Bonds of the Debtor.

R. A. BYRNE

Sworn to before me this 26th day of October, 1971.

JAN E. PISTEK
Notary Public

Jan E. Pistek, Notary Public, State of New York. No. 43-8382972. Qualified in Richmond County. Certificate filed in New York County. Commission Expires March 30, 1972.

8868

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	No. 30226

ORDER OF NOTICE

Manufacturers Hanover Trust Company and A. Frederick Keuthen, as Corporate Trustee and Individual Trustee, respectively, under the First and Refunding Mortgage of the Debtor, by order of this Court dated July 29, 1971 (Order No. 650) having been permitted to resign as Corporate Trustee and Individual Trustee, respectively, and to be discharged from the trusts created under the First and Refunding Mortgage upon the effective date of their resignations, subject only to the requirement that they file, within 90 days from the date of said order, an account of their proceedings since July 7, 1961, for the approval of this Court, and pursuant to said order, the Petitioners having filed with the Clerk of this Court on October 27, 1971, an account of their proceedings as such Trustees for the period from July 7, 1961 to and including the date of said account, i.e. October 26, 1971, and the Petitioners by their Attorneys having orally petitioned this Court to approve said account and for this purpose to enter herein an order prescribing the manner and notice of hearing to be held on said petition and fixing a time and

place for such hearing, and granting such other and further relief as this Court may deem appropriate, and the Court being duly advised in the premises it is ORDERED that:

1. Said Petition for the approval of said account of the Petitioners is hereby set down for hearing in this Court at 10 o'clock A.M., or as soon thereafter as the Court can hear the same, on the 18th day of November, 1971 in the United States Court House, New Haven, Connecticut; and

2. The Petitioners are hereby directed to give notice of said petition and this order by mailing copies of this Order and a copy of their said account to all parties who are customarily notified of hearings in these proceedings, and to cause a notice directed to the holders of the First and Refunding Mortgage Bonds of the Debtor, all other creditors and holders of outstanding securities, and all other parties interested in the Debtor's estate, to be published not later than November 11, 1971, once in The New Haven Journal-Courier and once in The Wall Street Journal, such notice to be substantially in the form of the notice annexed hereto, marked Exhibit A and made a part hereof.

S/ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

November 5, 1971

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

In Proceedings For The Reorganization of a Railroad, IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor (No. 30226). NOTICE IS HEREBY GIVEN, that Manufacturers Hanover Trust Company and A. Frederick Keuthen, Corporate Trustee and Individual Trustee, respectively, under the First and Refunding Mortgage of the Debtor, pursuant to Order of this Court dated July 29, 1971 (Order No. 650) filed herein on October 27, 1971 an account of their proceedings since July 7, 1961, for the approval of this Court. NOTICE IS FURTHER GIVEN that a hearing on the petition of said Trustees for the approval of said account will be held before the Reorganization Court in the United States Courthouse, New Haven, Connecticut, on November 18, 1971 at 10 A. M. A copy of said account may be examined by any interested person at the office of the Corporate Trustee, 40 Wall Street, New York, N. Y. or in the office of the Clerk of the Court.

MANUFACTURERS HANOVER TRUST COMPANY
As Trustee aforesaid

A130

Order No. 661-A

IN THE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.	No. 30226

ORDER APPROVING ACCOUNT

Manufacturers Hanover Trust Company and A. Frederick Keuthen, as Coporate Trustee and Individual Trustee, respectively, under the First and Refunding Mortgage of the Debtor (the "Petitioners"), by order of this Court dated July 29, 1971 (Order No. 650) having been permitted to resign as such Trustees and to be discharged from the trusts created by the First and Refunding Mortgage upon the effective date of their resignations, subject only to the requirement that they file, within 90 days from the date of said Order, an account of their proceedings since July 7, 1961, for the approval of this Court, and pursuant to said Order, the Petitioners have filed with the Clerk

of this Court on October 27, 1971, an account of their proceedings as such Trustees for the period from July 7, 1961 to and including the date of said account, i.e. October 26, 1971, and the petition of said Trustees for the approval of their account having come on for hearing which was duly noticed pursuant to order of this Court dated November 5, 1971, including publication in The New Haven Journal Courier and The Wall Street Journal, and all parties in interest having been heard or given opportunity to be heard at said hearing and an adjournment thereof held on February 16, 1972, and Manufacturers Hanover Trust Company having consented to the entry by this Court of its order dated February 16, 1972 with respect to the disposition of the funds presently held by it which are described in the aforesaid account, and the Court being duly advised in the premises, it is ORDERED that:

The account of Manufacturers Hanover Trust Company and A. Frederick Keuthen, as Corporate Trustee and Individual Trustee, respectively, under the First and Refunding Mortgage of the Debtor for the period from July 7, 1961 to and including October 26, 1971, is hereby APPROVED.

ENTER:

ROBERT P. ANDERSON
United States Circuit Judge,
sitting by designation.

February 29, 1972

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization
of a Railroad

In the Matter of	:	
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,	:	No. 30226
Debtor	:	

PETITION OF MANUFACTURERS HANOVER TRUST COMPANY, AS CORPORATE TRUSTEE, AND A. FREDERICK KEUTHEN, AS SUCCESSOR INDIVIDUAL TRUSTEE FOR AN ALLOWANCE FOR EXPENSES INCURRED FROM JULY 7, 1961 TO AUGUST 30, 1971 AND FOR COMPENSATION FOR SERVICES RENDERED FROM JULY 7, 1961 TO AUGUST 30, 1971 IN CONNECTION WITH THESE PROCEEDINGS

Manufacturers Hanover Trust Company, as Corporate Trustee, and A. Frederick Keuthen, as Successor Individual Trustee, under the Mortgage of the Debtor as hereinafter set forth, respectfully petition this Court, pursuant to the provisions of Section 77(c)(12) of the Bankruptcy Act (11 U.S.C. §205[c][12]), for an allowance for the expenses they incurred from July 7, 1961 to August 30, 1971 and for compensation for the services they rendered from July 7, 1961 to August 30, 1971 in connection with these proceedings, and in support thereof state:

1. Petitioner, Manufacturers Hanover Trust Company ("Manufacturers Hanover"), is a banking corporation duly organized and existing under the laws of the State of New York and maintains its principal corporate trust office

at 40 Wall Street, New York, N. Y. 10015. Petitioner, A. Frederick Keuthen, is an individual and maintains his principal residence at 15 Laurel Way, Madison, N.J. 07940. At the time he performed services and incurred expenses as Trustee, he was employed by Manufacturers Hanover or by Manufacturers Trust Company, the latter Company and the Hanover Bank having merged on September 8, 1961 with Manufacturers Trust Company being the surviving corporation under the name Manufacturers Hanover Trust Company. Mr. Keuthen seeks no compensation for such services and expenses for himself, but solely as they are included in the services and expenses of Manufacturers Hanover as to which compensation and reimbursement is sought hereby.

2. Petitioners were, respectively, Corporate and Successor Individual Trustee under the First and Refunding Mortgage of the Debtor, dated July 1, 1947 (the "Mortgage") which at the date of the filing of the petition for reorganization herein secured approximately $100,000,000 principal amount of the Debtor's First and Refunding Mortgage Bonds, 4% Series A, due July 1, 2007 (the "Bonds").

3. The Mortgage provides in substance that the obligor shall pay the Trustees reasonable compensation for the services they render, and for their reasonable expenses and counsel fees and other disbursements and those of their attorneys, agents and employees in fulfilling their duties and obligations thereunder. Annexed hereto as Exhibit A and made a part hereof is the text of Article Eleven, Section 1, clause (10), which sets forth the compensation provisions contained in the Mortgage.

4. As Corporate Trustee and Successor Individual Trustee under the Mortgage, Petitioners owed a fiduciary duty to each of the holders of the Bonds issued under and secured by the Mortgage and, where a default under the Mortgage had occurred and was continuing, were obligated to represent those holders with the same degree of care and skill which a prudent man would use under the circumstances in the conduct of his own affairs.

5. Notwithstanding the commencement of these proceedings on July 7, 1961, Petitioners continued to render the normal, routine services ("Normal Services") they had rendered as Trustees under the Mortgage since its execution. In addition, since the commencement of these proceedings, and the resulting default of the Debtor under the Mortgage, Petitioners, in the performance of their duties and obligations under the Mortgage, rendered, as a result of such defaults, extensive extraordinary services ("Extraordinary Services") on an almost daily basis on behalf of the holders of the Bonds until this Court approved the Petitioners' resignation as Corporate Trustee and Successor Individual Trustee, respectively, under the Mortgage on July 29, 1971. Mr. Iannotti's appointment as Successor Trustee became effective August 30, 1971. These Extraordinary Services continued until February 22, 1972 when this Court signed an order approving Petitioners' account as Trustees under the Mortgage. Following the settlement of their account, Petitioners turned over to Mr. Iannotti, the Successor Trustee, all necessary papers and cooperated with him in the beginning of his new duties. Since that time various incidental matters

have arisen where it was necessary for Manufacturers Hanover to be involved but relatively little time has been required.

6. The Extraordinary Services rendered by Petitioners during the period July 7, 1961 to August 30, 1971 are more fully described and identified in the affidavits submitted in support of this Petition, being, particularly, the affidavit of Frank W. Kaestner, a Senior Vice President of Manufacturers Hanover, which affidavit is annexed hereto as Exhibit B and made a part hereof, and the affidavit of Horace J. McAfee, a Senior Partner of Messrs. Simpson Thacher & Bartlett, in support of his firm's application for compensation, which affidavit is annexed hereto as Exhibit C and made a part hereof.

7. To assist them in connection with their duties and obligations under the Mortgage, Petitioners retained their counsel, Messrs. Simpson Thacher & Bartlett, One Battery Park Plaza, New York, N.Y. 10004, to advise them and to represent them in these proceedings. The expenses Petitioners incurred for the period July 7, 1961 to August 30, 1971, as a result of their retention of Messrs. Simpson Thacher & Bartlett, are as set forth in said Exhibit C, annexed hereto.

8. Petitioners believe that they discharged the responsibilities they bore in connection with their duties and obligations under the Mortgage with skill and efficiency, that their Extraordinary Services on behalf of the holders of the Bonds were beneficial not only to the Bondholders but also aided in the proper administration of the Debtor's estate, and that reasonable compensation to Petitioners commensurate with the value of Petitioners' Extraordinary Services for the period July 7, 1961 to August 30, 1971 would

be $304,416.67 plus the amount of their disbursements as hereinafter stated. In this connection it is to be noted that for their Normal Services during the period July 1, 1961 to the date they ceased to act as Trustee under the Mortgage, Petitioners have been paid the sum of $43,937.24 by the Trustees of the Debtor.

9. The scope and complexity of these reorganization proceedings are unprecedented and many more years may elapse before they are concluded. Similarly, the extent of the Extraordinary Services required of Petitioners in connection with these proceedings and the expenses incurred by them relating to those Services over a period in excess of ten years were unprecedented.

10. Since Petitioners were permitted to resign as Corporate Trustee and Successor Individual Trustee, respectively, under the Mortgage and their final account was approved by order of this Court dated February 22, 1972, it is appropriate at this time that Petitioners be compensated for the services they have rendered herein and for expenses they have incurred, including their compensation for Extraordinary Services, as well as the services and disbursements of Messrs. Simpson Thacher & Bartlett as set forth in Exhibit C annexed hereto. It is to be noted that the services herein began at the time of the default by the Debtor in the payment of interest due on the Bonds July 1, 1961 and that the Debtor has not been called upon to pay (and has not paid) any amount whatsoever for the Extraordinary Services rendered by Petitioners and their counsel or for any repayment of their substantial disbursements.

11. In connection with this Application, it is pertinent to point out that in its decision dated July 28, 1969, reported at 304 F. Supp. 1121, this Court stated that:

> "The Indenture Trustees, their counsel and others who are entitled at this time to reimbursement of expenses and to be compensated, may, if counsel deem advisable, apply for interim allowances, and the Court will entertain such petitions."

12. The Petitioners submit that they are entitled to compensation and reimbursement of expenses as follows:

(1)	Compensation for Extraordinary Services rendered from July 7, 1961 to August 30, 1971:	$304,416.67
(2)	Miscellaneous and other expenses of Manufacturers Hanover Trust Company as set forth in Affidavit of Frank W. Kaestner annexed hereto as Exhibit B (i.e. $194,416.60) exclusive of advance of $91,398.26 made to Messrs. Simpson Thacher & Bartlett for partial payment on account of services rendered and disbursements incurred (compensation of $90,000 and disbursements of $1,398.26) as described in affidavit annexed hereto as Exhibit C	103,018.34
	Total	$407,435.01

exclusive of interest as shown in paragraph 13 of said affidavit of Frank W. Kaestner and also exclusive of the amount requested by Messrs. Simpson Thacher & Bartlett as compensation for services and reimbursement of expenses as set forth in said Exhibit C, i.e. $1,700,000.00 for services rendered, and $15,234.81 for disbursements, or a total of $1,715,234.81 It is proposed by Petitioners and Messrs. Simpson Thacher & Bartlett that the allowances of compensation and disbursement of Messrs. Simpson Thacher & Bartlett be made without regard to the advance of $91,398.26 made to them by Petitioners herein and that Petitioners shall look to Messrs. Simpson Thacher & Bartlett for the repayment of said advance out of the

allowance for compensation and disbursements made herein to said firm.

13. In connection with the application of Messrs. Simpson Thacher & Bartlett, it is pertinent to state that when the New Haven filed its petition for reorganization, Petitioners and Messrs. Simpson Thacher & Bartlett agreed, in view of the provisions of Section 77 of the Bankruptcy Act, that Messrs. Simpson Thacher & Bartlett would be legally entitled to receive as compensation for their services to Petitioners (and reimbursement for their expenses and disbursements) only such amount as was ultimately found by the courts to be reasonably and properly reimbursable to Petitioners out of the assets of the New Haven. However, Messrs. Simpson Thacher & Bartlett stated that in the event such amount was in their opinion grossly inadequate, Messrs. Simpson Thacher & Bartlett would come to Manufacturers Hanover and ask that they be paid additional compensation out of Manufacturers Hanover's own funds. Manufacturers Hanover agreed to consider any such request but it was expressly understood that it would be under no legal obligation to comply.

14. This Petition including Exhibits A, B and C hereto and the annexes and appendices to said exhibits set forth the facts upon which Petitioners rely for their compensation and reimbursement. Petitioners reserve the right to submit legal memoranda and other supporting evidence, if necessary, to support their claim that they are legally entitled to compensation at the present time as indicated in paragraph 12 hereof. This paragraph is intended to satisfy the requirement of Rule 40(a) of the Rules of Practice of the

Interstate Commerce Commission, 49 C.F.R. §1100.49(a).

15. As required by Rule 51 of the Rules of Practice of the Interstate Commerce Commission (49 C.F.R. §1100.51, (a) this Petition, (b) Exhibits A, B and C hereto, together with all annexes and appendices attached, (c) Petitioners' relevant time and expense records, and (d) the relevant time and expense records of Messrs. Simpson Thacher & Bartlett, are stated to be the evidence on which Petitioners rely in this proceeding.

16. As required by Rule 250(d)(1) of the Rules of Practice of the Interstate Commerce Commission (49 C.F.R. §1100.250(d)(1)) Petitioners state that this application should not have any effect, either adverse or beneficial, on the quality of the human environment.

17. Petitioners have not entered into any agreement, expressed or implied, with any other party in interest in the proceedings, including the Debtor, any creditor, the Trustees of the Debtor, or any representative of any of them, or with any attorney for any such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate, and no agreement or understanding exists between Petitioners and any other person for a division of any such compensation.

18. In view of the long period of time during which the services were rendered and the probability that substantial further time will elapse before the Interstate Commerce Commission renders its report on this application,

it would be appropriate that Petitioners and their counsel be granted an advance payment on account of their application for compensation and reimbursement of disbursements, in such amount as may be found to be just and proper.

WHEREFORE, Petitioners respectively pray that this Court:

(1) Enter an order for transmittal by the Clerk of this Court to the Interstate Commerce Commission of copies of the Petition of Manufacturers Hanover Trust Company as Corporate Trustee, and A. Frederick Keuthen, as Successor Individual Trustee, for allowance for expenses incurred and for compensation for services rendered, including the affidavit of Frank W. Kaestner and the annexes thereto, which is attached to this Petition, as well as the application of Messrs. Simpson Thacher & Bartlett for allowance of compensation and reimbursement of disbursements (being the affidavit of Horace J. McAfee attached to said petition), including all appendices to said application, and of such order, to the end that the Interstate Commerce Commission, upon receipt of such copies, may fix the maximum limits for the allowance to be made for compensation of said Petitioners and for reimbursement of expenses, including an allowance to Messrs. Simpson Thacher & Bartlett for compensation for services rendered and for reimbursement of expenses, all as set forth in this Petition;

(2) At the time of entering the aforesaid order, to grant such advances, in the nature of interim payments on account of the payments to be directed under paragraph "(3)" hereof, as may be shown to be just and proper; and

(3) Reserve jurisdiction to consider and pass upon the allowance of compensation to Petitioners for services

rendered and for reimbursement of expenses incurred, including the allowance of compensation to their counsel, Messrs. Simpson Thacher & Bartlett, and the reimbursement of expenses of said counsel, upon receipt by this Court of the report of the Interstate Commerce Commission fixing said maximum limits of allowance for compensation and reimbursement of expenses.

Dated: New York, New York
June 12, 1975

MANUFACTURERS HANOVER TRUST COMPANY, in its own right and as former Corporate Trustee of The First and Refunding Mortgage of the Debtor.

By _____
Senior Vice President

_____
A. FREDERICK KEUTHEN, as former Individual Trustee under The First and Refunding Mortgage of the Debtor.

VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

FRANK W. KAESTNER, being duly sworn, deposes and says: I am a Senior Vice President of Manufacturers Hanover Trust Company, one of the Petitioners herein, and am in charge of its Corporate Trust Department; I have read the foregoing Petition and know the contents thereof and the same is true to my own knowledge except as to the matters therein stated to be upon information and belief, and as to those matters I believe it to be true.

Frank W. Kaestner

Subscribed and sworn to
before me this 13th day
of June , 1975.

Notary Public

VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

A. FREDERICK KEUTHEN, being duly sworn, deposes and says: I was formerly the Successor Individual Trustee referred to and am one of the Petitioners herein; I have read the foregoing Petition and know the contents thereof and the same is true to my own knowledge except as to the matters therein stated to be upon information and belief, and as to those matters I believe it to be true.

A. Frederick Keuthen

Subscribed and sworn to
before me this 17th day
of June, 1975.

Notary Public

Exhibit B to Petition of Manufacturers Hanover Trust Company

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN PROCEEDINGS FOR THE
REORGANIZATION OF A RAILROAD

In the Matter of	
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,	No. 30226
Debtor	

AFFIDAVIT AS TO SERVICES RENDERED AND EXPENSES INCURRED FROM JULY 7, 1961 TO AUGUST 30, 1971 BY MANUFACTURERS HANOVER TRUST COMPANY, AS FORMER CORPORATE TRUSTEE UNDER THE FIRST AND REFUNDING MORTGAGE OF THE DEBTOR

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

FRANK W. KAESTNER, having been duly sworn, deposes and says:

1. I am a Senior Vice President of Manufacturers Hanover Trust Company (the "Petitioner") in charge of its Corporate Trust Department and in such capacity I am now directly responsible for the supervision of all matters referred to below in connection with Petitioner's performance of its duties and obligations as Corporate Trustee and have custody of the Department's records relating thereto. I have been employed by Petitioner and its predecessor companies since July 1934 and at the time of the filing for reorganization of the Debtor was acting as a Vice President in the

Corporate Trust Department with responsibilities which included serving as the principal assistant to Mr. A. Frederick Keuthen, the department head and officer directly in charge of all operations. Mr. Keuthen was a Senior Vice President of Petitioner until he retired in 1969, and, individually, the Successor Individual Trustee under the Mortgage referred to below. In 1968 I was appointed Senior Vice President and thereafter became the officer in charge of the Corporate Trust Department. During the period July 7, 1961 to August 30, 1971 I participated in the formulation of all policies having to do with Petitioner's duties and obligations as Corporate Trustee under the Mortgage described in the following paragraph and I have personal knowledge of the matters described below.

2. I am submitting this affidavit in support of Petitioner's application, as former Corporate Trustee under the Debtor's First and Refunding Mortgage (the "Mortgage"), for allowance for expenses incurred from July 7, 1961 to August 30, 1971 in connection with these proceedings and for compensation for extraordinary services rendered as Trustee from July 7, 1961 to August 30, 1971.

3. As Corporate Trustee under the Mortgage, Petitioner's regular duties included, among other tasks, maintaining records of account of sums deposited with Petitioner pursuant to the Mortgage provisions and other similar duties. Petitioner continued its routine and normal services from the commencement of these proceedings until its discharge as Corporate Trustee. Such services were of a nature that Petitioner would perform whether or not defaults existed under the Mortgage.

4. As a result of the default in the payment of the interest due July 1, 1961 on the First and Refunding Mortgage Bonds, Series A, (the "Bonds") secured by the Mortgage and the initiation of these proceedings on July 7, 1961 Petitioner had to render extensive additional special and extraordinary services and incur certain necessary expenses in order to protect adequately the interests of the holders of the Bonds (the "Bondholders") and to perform efficiently the duties and obligations placed upon Petitioner, as Corporate Trustee, in accordance with the requirements of the Mortgage and the law.

Petitioner believes that the Debtor's estate has benefited from such services not only because the proper administration of this proceeding requires the protection of the rights of the Bondholders, but also because the estate and the Bondholders obtained substantial benefits, in terms of an increase in the assets of the estate and the disallowance of claims to priorities over the rights of the Bondholders as a direct result of the efforts of Petitioner.

5. No application for compensation for the aforesaid services or reimbursement of the aforesaid expenses, both hereinafter more fully described, has heretofore been made by Petitioner.

6. During July of 1961 certain of Petitioner's senior officers consulted with counsel and, after due consideration of how best to discharge its responsibilities under the Mortgage, decided to petition the Court for permission to intervene as Corporate Trustee. Officers and Administrative Assistants of Petitioner conducted a thorough examination of

its records relating to the Mortgage to determine the amount of securities held, the collateral pledged, the various deposits on hand representing the proceeds of property sales and other facts relevant to its role as intervenor. This information was set forth in its petition to intervene dated July 25, 1961.

7. With the advent of these proceedings Petitioner was deluged with inquiries of every kind from holders of the Bonds. As Corporate Trustee for these Bondholders, Petitioner was obligated to respond to each of these inquiries with care and full knowledge of the facts. While many of the inquiries received by Petitioner were of a commonplace nature and could be answered easily, many raised difficult questions requiring extensive and careful consideration. Petitioner expended substantial time and effort in connection with these latter inquiries in order to give the Bondholders satisfactory answers.

8. The matters as to which Petitioner rendered extraordinary services during the period covered by this petition, included, but were not limited to, the following:

(a) MEETINGS WITH COUNSEL

During the course of the Debtor's reorganization proceedings there were numerous meetings and discussions between officers of Petitioner's Corporate Trust Division with its own counsel and representatives of various other interested parties. These meetings and discussions began upon the Debtor's failure to pay the interest due July 1, 1961 on the Bonds and increased in number upon the filing of the

petition in this proceeding. These meetings and discussions covered such topics as the general course of action to be followed by Petitioner as Corporate Trustee, as well as consideration of the positions to be taken on specific issues which were before the court at various times, and which were felt to require action to protect the best interests of the Bondholders. These topics included, but were not limited to, the general matters of the Debtor's formulation of a plan of reorganization, questions regarding the investment of the proceeds of property released from the lien of the Mortgage and deposited with Petitioner, the leasing of new commuter cars, possible inclusion of the Debtor in the merger of the Pennsylvania and New York Central Railroads, the application of the proceeds of flood loans, valuation studies of the assets of the New Haven, initiation of studies covering the feasibility of freight-only operation of the Debtor, and possible liquidation of the assets of the Debtor.

The matter of the consideration to be received by the Debtor's estate was the subject of numerous meetings among counsel and various officers of the Petitioner which led to court proceedings which eventually involved appeals through the judicial system up to and including the Supreme Court. Meetings with counsel intensified with the filing of a petition in bankruptcy by Penn Central Transportation Company in June of 1970. These latter meetings discussed possible conflicts of interest raised by the Penn Central bankruptcy and eventually resulted in petitioning this Court for permission to resign as Corporate Trustee under the Mortgage.

These meetings with counsel referred to above and the many matters requiring the efforts and attention of the Petitioner are described more fully in the affidavit of Horace J. McAfee, a Senior Partner of Messrs. Simpson Thacher & Bartlett, counsel to Petitioner, covering the legal services rendered by such firm to Petitioner.

(b) HEARINGS

During this same period of the reorganization proceedings various senior officers of the Petitioner's Corporate Trust Division attended hearings before this Court and before the United States District Court for the Southern District of New York, as well as hearings before the Interstate Commerce Commission held in New York City and Washington, D.C. These officers were J. T. Harrigan, A. F. Keuthen, F. M. Wiegman, R. A. Byrne, T. C. Crane and the deponent, F. W. Kaestner. Petitioner attempted to have one or more of the foregoing officers or their representatives attend all such hearings which might affect the Bondholders and at such hearings to consult with counsel and take any action necessary to protect the interests of such holders. The period during which consideration of the Debtor's plan of reorganization was commenced and a plan formulated required considerable amounts of time to be spent in New Haven by various of the above-mentioned officers, especially Mr. R. A. Byrne, a Vice President. In addition, Petitioner was represented at the hearings pertaining to the issuance of loan certificates by the Trustees of the Debtor. Such certificates were vital to the Debtor's estate in that they supplied critically needed cash during the initial period of this proceeding.

Additional hearings, before this and other courts, including appelate courts, dealing with the following aspects of the Debtor's operations were attended at one time or another during Petitioner's tenure as Corporate Trustee, because of the possible effects of such hearings on the best interests of the Bondholders: the merger of the Pennsylvania and New York Central, and the possible inclusion of the Debtor in such a merged system; the allocation and disposition of certain flood loan proceeds; the release of property and proceeds of property subject to the lien of the Mortgage upon the certification of net Additions and Betterments; the withdrawal of funds held by the Petitioners or the Corporate Trustee and the deposit of same in the registry of this Court; the consideration of the proper valuation of the assets of the New Haven and appropriate allocation thereof to the Debtor's estate; the subsequent appeals as to the value of the consideration to be received by the Debtor for its assets up to and including an appeal to the United States Supreme Court, and the subsequent redetermination of the consideration to be received pursuant to the order of the Supreme Court.

In addition, certain of Petitioner's officers attended hearings with respect to the effect of the Penn Central bankruptcy on the valuation of and consideration to be received for the assets of the New Haven which had been transferred to Penn Central. The decision of the Supreme Court remanding the consideration question placed Petitioner in the position of facing a potential conflict of interest as Corporate Trustee for the holders of the Bonds as well as Corporate Trustee for one of a number of issues of Penn Central Bonds where it acted as trustee. This potential

conflict directly resulted in Petitioner's decision almost immediately after the Penn Central bankruptcy to petition the Reorganization Court for permission to resign as Corporate Trustee under the Mortgage.

(c) BONDHOLDERS MEETINGS

Shortly after the Debtor's filing of its petition herein, a committee composed of and representing the interests of the Bondholders was formed. At various stages of these proceedings, meetings were held between members of this committee and officers of Petitioner's Corporate Trust Division. It was deemed both desirable and necessary to develop a rapport with this committee since in its fiduciary capacity as Corporate Trustee, Petitioner was as fully responsible to them as it was to all Bondholders. Petitioner was, therefore, always interested in being aware of the committee's viewpoints concerning various developments in the Debtor's reorganization and met frequently with the committee and its counsel to that end. These meetings were generally open to other Mortgage Trustees, institutional lenders and other interested parties and individual Bondholders in addition to members of the Bondholders' committee. Such meetings were attended by officers of Petitioner's Corporate Trust Division as well as by counsel.

In addition to the meetings with the Bondholders' committee, there were numerous meetings between officers of Petitioner and its counsel with Mr. Oscar Gruss, an individual holder of a substantial amount of the Bonds.

All of these meetings were of vital importance to the Petitioner as Corporate Trustee insofar as they made it possible to determine and protect the interests of the

Bondholders as well as giving Petitioner an opportunity to suggest those possible courses of action at various times which it felt were best designed to satisfy its fudiciary responsibilities to the Bondholders.

(d) GENERAL

Upon the default by the Debtor in the payment of the interest on the Bonds due July 1, 1961 and filing of the Debtor's petition in bankruptcy a week later, a flood of inquiries was received from Bondholders inquiring as to the status of their investments. Since July 1, 1961 hundreds of inquiries dealing with specific issues arising from the Debtor's failure to pay interest on the Bonds on that date and from the bankruptcy have been answered by the Petitioner. Petitioner felt obligated to answer all inquiries received promptly and diligently, and painstaking efforts were made to respond as accurately as possible. On numerous occasions conferences with counsel were held to consider specific replies to various inquiries. Furthermore, Petitioner undertook from time to time to mail letters to all known Bondholders in an attempt to keep them apprised of significant developments in the bankruptcy proceedings. These letters also involved a considerable effort by the officers of Petitioner's Corporate Trust Division and counsel to present the facts clearly and understandably. As part of a continuing effort to keep as many of the Bondholders as possible informed of various developments in these proceedings, Petitioner compiled an extensive list of names and addresses of people claiming to hold bearer Bonds so that they might be included in these mailings. This list, together with records maintained by Petitioner while acting as Registrar for the Bonds, enabled Petitioner to communicate with as many of the Bondholders as possible in the execution of its fiduciary duties.

9. The foregoing description of the extraordinary services rendered by Petitioner as Corporate Trustee from July 7, 1961 to August 30, 1971 is not exhaustive but merely illustrative. To the extent that the Debtor's present Trustee, the Interstate Commerce Commission, this Court or any other interested party or agency desires additional information, Petitioner is willing to supplement the statements made above in support of its petition to such extent and in such detail as may be necessary to satisfy such request.

10. Petitioner believes that its wide range of experience in Bankruptcy matters and as Corporate Trustee has been of significant benefit to both the Debtor's estate and Bondholders. Petitioner and its predecessors have conducted an extensive Corporate Trust business for many decades and have, over the course of the last one hundred years, acted as Trustee under a wide variety of Railroad Trust Indentures and Mortgages. Since 1961 your deponent and his three principal assistants, R. A. Byrne, D. B. Herterich, and T. C. Crane, all Vice Presidents of the Petitioner, as well as Mr. A. Frederick Keuthen, a Senior Vice President of Petitioner until his retirement in 1969, have personally acted for the Petitioner in several Section 77 bankruptcy proceedings including those of the Hudson and Manhattan Railroad Company and The Central Railroad Company of New Jersey. Most recently, of course, the Petitioner and the above-mentioned indivuduals have also been very active in the Penn Central Transportation Company proceedings.

The individual officers of Petitioner concerned with the extraordinary services rendered to the Debtor were all extensively acquainted with the problems of railroad

bankruptcies from many years of professional experience in this area. Your deponent's immediate predecessor, A. Frederick Keuthen, former individual Trustee under the Mortgage, who was in charge of Petitioner's Corporate Trust Department from 1964 through 1969, was also directly concerned with the reorganization proceedings of the Missouri Pacific Railroad (as a member of the Reorganization Committee) as well as a number of other railroad bankruptcy proceedings during the 1930's. At that time Mr. Keuthen's principal trust administrative officer, Mr. F. Milton Wiegman, then Vice President of Petitioner and now retired, was also concerned with many bankruptcy matters and had, in the proceedings concerning the present Debtor, spent considerable time on matters regarding the Bonds. Mr. Keuthen's predecessor, Mr. J. T. Harrigan, Senior Vice President of Petitioner, was in charge of Petitioner's Corporate Trust Department from the beginning of these proceedings through 1964. Mr. Harrigan had nearly 50 years experience in the Corporate Trust area, and extensive expertise in bankruptcy matters arising from his work during the depression of 1930 and subsequent years.

In addition to working closely with various counsel in connection with the day-to-day conduct of these many Section 77 proceedings, the above-mentioned officers of the Petitioner have frequently participated in conferences held in chambers by the respective presiding judges and have conferred at length with the various Debtors' Trustees, Federal Railroad Administrators, institutional investors and other principal creditor interests, labor representatives, and other interested parties to the proceedings. On various

occasions such officers have been called on to testify in Section 77 proceedings. It is evident that the individuals carrying out Petitioner's activities as Corporate Trustee under the Mortgage brought to bear significant experience and expertise. Your deponent believes that the direct personal participation in the various Section 77 proceedings referred to above by Messrs. Keuthen, Wiegman, Byrne, Herterich, Crane and himself gives Petitioner unsurpassed familiarity in handling issues common to Section 77 proceedings. These officers are also familiar with the practical aspects and problems of modern commercial railroad operations in the United States. Mr. Herterich is the individual Trustee under many Railroad Mortgages and is a Director of the Texas Mexican Railroad. He is also a member of the President's Financial Advisory Board on Amtrak. Both he and Mr. Crane are associate members of the Association of American Railroads-Treasury Division. Your deponent believes this experience made it possible for Petitioner to represent effectively the interests of the holders of the approximately $76,000,000 principal amount of Bonds. At the same time, such experience enabled Petitioner to work closely and efficiently in these proceedings with the Trustees of the Debtor and assisted in the proper conduct of these proceedings with resultant benefit to the Debtor's estate.

11. Petitioner has been paid by the Debtor's estate for all the normal services rendered as Trustee during the period July 8, 1961 to February 16, 1972. These services were computed at a rate which had been agreed upon between the obligor and the Petitioner prior to July 8, 1961. These rates were substantially less than the rates charged by

Petitioner to other obligors during such period and were much less than the rates currently charged by Petitioner for similar Mortgage services under new Indentures.

12. Petitioner believes that it was imperative to render the extraordinary services as outlined above and that these services were beyond the scope of normal Trustee services. As compensation for such extraordinary services the Petitioner feels that an annual charge of $30,000 is justified and reasonable. Your deponent believes and therefore states that the fair and reasonable value of the extraordinary services rendered by the Petitioner in connection with these proceedings up to the date Mr. Iannotti's qualification as Successor Trustee became effective (August 30, 1971) is not less than $304,416.67. Such amount does not include any of the incurred expenses enumerated in Paragraph 13 below, or any amounts payable by the Petitioner to Messrs. Simpson Thacher & Bartlett for legal services rendered, as summarized in the foregoing Petition and as detailed in the accompanying affidavit of a Senior Partner of such firm in support of their request for compensation. Your deponent requests the allowance to the Petitioner out of the Debtor's estate of at least the amount shown as compensation and reimbursement of expenses in Paragraph 12 in the accompanying Petition.

13. The Petitioner has advanced $194,416.60 of its own funds to meet the direct out-of-pocket expenses of protecting the Bondholders' interests. These expenses fell generally in the following categories and in the approximate amounts shown:

Court transcripts (See Annex A)	$ 14,814.97
Printing bills for:	
(a) Reports to Bondholders	2,005.84
(b) Briefs and appendices (See Annex B)	43,080.90
(c) Publication of notice	396.64
Travel expenses between New York and New Haven and New York and Washington, D.C.	945.37
Portion of expenses shared with Chase Manhattan Bank as Trustee for services of Wyer, Dick & Co., S.D. Leidesdorf & Co., and G.L. & H.J. Gross Inc. (See Annex C)	41,470.19
Advance made to Counsel, Simpson Thacher & Bartlett	91,398.26
Portion of expense in various I.C.C. proceedings paid to Dewey, Ballantine, Bushby, Palmer & Wood	202.20
Unbilled and unpaid advances	102.23
Total:	$194,416.60

These funds have been advanced by the Petitioner during the period beginning July 8, 1961. By July 31, 1967 the amount had increased from $47,000 to $140,000 and thereafter rose slowly to the final figure of $194,416.60. During this period, the Petitioner received no interest or other compensation for the advance of these funds and, accordingly, requests that the existing amount be repaid with interest at 6% per annum totalling $86,790.37 (to June 15, 1975) as permitted by Article Eleven, Section 1, clause (10) of the First and Refunding Mortgage and calculated in accordance with the breakdown as shown on Annex D attached hereto.

14. Petitioner has not entered into any agreement, expressed or implied, with any other party in interest in the

Proceeding, including the Debtor, any creditor, the Trustees of the Debtor, or any representative of any of them, or with any attorney for any such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate, and no agreement or understanding exists between Petitioner and any other person for a division of any such compensation.

WHEREFORE, your deponent respectfully prays that this Court award the relief sought in the Petition to which this affidavit is attached.

FRANK W. KAESTNER

Subscribed and sworn to
before me this 12th day
of June , 1975.

Exhibit C to Petition of Manufacturers Hanover Trust Company

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

A159

IN PROCEEDINGS FOR THE REORGANIZATION
OF A RAILROAD

In the Matter of	
	No. 30226
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,	
Debtor.	

AFFIDAVIT OF HORACE J. McAFEE, A PARTNER OF SIMPSON THACHER & BARTLETT, IN SUPPORT OF THE PETITION OF MANUFACTURERS HANOVER TRUST COMPANY, AS CORPORATE TRUSTEE, AND A. FREDERICK KEUTHEN, AS SUCCESSOR INDIVIDUAL TRUSTEE, UNDER THE DEBTOR'S FIRST AND REFUNDING MORTGAGE, FOR AN ALLOWANCE FOR EXPENSES INCURRED FROM JULY 7, 1961 TO AUGUST 30, 1971 AND FOR COMPENSATION FOR SERVICES RENDERED FROM JULY 7, 1961 TO AUGUST 30, 1971 IN CONNECTION WITH THESE PROCEEDINGS

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HORACE J. McAFEE, being duly sworn, deposes and says:

1. I am a senior member of the firm of SIMPSON THACHER & BARTLETT ("ST&B"), One Battery Park Plaza, New York, N.Y. 10004, counsel for the Petitioners who were the Corporate Trustee and the Successor Individual Trustee, respectively, under the Debtors' First and Refunding Mortgage dated July 1, 1947 (the "Mortgage"). All legal matters relating to the Mortgage have been under my supervision as a member of ST&B since at least the date of the Mortgage, i.e., July 1, 1947.

2. To assist them in connection with their duties and obligations under the Mortgage, Petitioners retained ST&B, their counsel since prior to the date of the Mortgage, to advise and represent them in connection with these proceedings.

3. From July 7, 1961 to August 30, 1971, ST&B has rendered professional services and incurred expenses to and for the benefit of the Corporate Trustee and the Successor Individual Trustee (referred to herein collectively as the "Indenture Trustees") with respect to such matters as were directed by the Corporate Trustee and, on occasions, by the Successor Individual Trustee.

4. ST&B has not previously filed herein any petitions or affidavits for or in support of applications for any compensation or reimbursements of expenses from the Estate of the Debtor.

5. As is more fully set forth in Appendix 1 hereto, during the period July 7, 1961 to August 30, 1971, ST&B, in rendering such professional services, has devoted a total of not less than 12,378 hours through not less than 54 individual attorneys, certain of whom were or have since become members and senior members of the firm, including not less than 259 days at various courts and ICC proceedings, as is set forth in Appendix 2 hereto, and also including the preparation of numerous briefs and memoranda for the ICC and the various courts (including the United States Supreme Court) as is set forth in Appendix 3 hereto. In addition, ST&B has devoted a total of more than 500 hours through not less than 5 individual attorneys, certain of whom are members

and senior members of the firm, in the preparation of the application of the Indenture Trustees and ST&B for compensation and reimbursement of expenses.

6. The services rendered by ST&B which this affidavit summarizes are set forth in detail in Appendix 4 hereto, and may be classified as falling into the following general categories:

A. Matters relating generally to the reorganization proceedings of the Debtor and the duties of the Indenture Trustees relating thereto, including advising the Indenture Trustees on a day-to-day basis on the various problems in connection with the protection of the interests of the holders of the Debtor's First and Refunding Mortgage Bonds (the "Bonds").

B. Services relating to the Debtor's plan of reorganization pursuant to Section 77 of the Bankruptcy Act and advising the Indenture Trustees as to responses to be made to inquiries and positions to be taken with regard to such plan.

C. Representing the Indenture Trustees at and rendering advice with respect to hearings before this Court, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Second Circuit, and the ICC in matters other than the valuation proceedings referred to in paragraph "J" below.

D. Rendering advice to the Indenture Trustee regarding the applications of the Trustees of the Debtor for

the issuance of Trustees' Certificates to provide the Debtor with funds for operations; consideration of the extent of the lien of such certificates vis-a-vis funds in the hands of the Corporate Trustee prior to bankruptcy; and necessary steps to be taken to protect the interests of the holders of the Bonds.

E. Advice regarding proposals of the Debtor from time to time to lease additional cars and equipment for the railroad with resulting favorable tax consequences to the Debtor under the New York tax law upon their approval by the Reorganization Court and, also, advice in opposing certain proposed amendments (one of which was adopted) to the New York tax law which would (and did) eliminate substantial benefits to the Debtor's Estate.

F. Advice as to applications by the Railroad Trustees for authority to sell property covered by the lien of the Mortgage and to withdraw the cash proceeds upon certifying a like amount of net Additions and Betterments to the Corporate Trustee which might reduce the security behind the Bonds, and also as to the release of other funds in the hands of the Corporate Trustee from the lien of the Mortgage.

G. Matters in connection with the reorganization of the Boston and Providence Railroad Company ("B&P") including work with other interested parties on the plan of reorganization, particularly in connection with the "windfall" provisions of the plan and other proposed amendments, and attending before the Reorganization Court on various occasions when matters relating to the B&P plan were being considered.

H. Advice to the Indenture Trustees as to the proposed abandonment of certain passenger service such as the

Cape Cod line and, particularly, in connection with the proposed discontinuance of all passenger service on the New Haven including attending before the ICC hearing examiner in Washington.

I. Opposing the claims of the so-called "Six Month Creditors" from the time of the assertion of such claims to their final rejection by the United States Court of Appeals for the Second Circuit, a decision on which certain petitions for certiorari to the Supreme Court of the United States were denied, including extended judicial proceedings at all levels, with a resulting enhancement of the rights of senior creditors of the Debtor by approximately $6 million by reason of the denial of priority status to claims of suppliers and per diem balances claimed by the railroads in approximately that total amount.

J. Opposing the initial valuation of the assets of the Debtor's Estate and of the consideration to be paid for purposes of inclusion in the Penn Central merger, including the valuation initially contended for by the Reorganization Trustees, from the time the amount of the consideration to be paid by Penn Central was first disclosed to the public (including the representatives of the Bondholders) through various hearings before the Interstate Commerce Commission, separate reviews (on two occasions) by both this Court and the United States District Court for the Southern District of New York, and ultimate judicial resolution by the Supreme Court of the United States. The result of this opposition and that of other representatives of Bondholders was that the value of the Debtor's assets was

increased by approximately $60-70 million, while the package of consideration to be paid to the Debtor, and its security, was enhanced by an even greater amount because, among other things, accrued real estate taxes of about $16 million were disallowed as "compensation" and the Penn Central stock to be paid as part of the purchase price was first supported by a guarantee (the "underwriting" imposed by this Court) and then, in view of the reorganization of the Penn Central itself, such stock was held by the United States Supreme Court to be substantially over-valued.

K. Initiating discussions with Messrs. Saunders and Perlman and other officials of Penn Central with a view to settling the controversy resulting from the objections of the Indenture Trustees and other bondholder representatives to the price agreed to be paid for the New Haven assets and pursuing the matter, with certain other bondholder representatives, in conferences with Messrs. Saunders, Perlman and others in New York on four different occasions.

L. Services ancillary to the foregoing categories, including innumerable telephone conversations and conferences with the Indenture Trustees and with the Railroad Trustees and their counsel, as well as with counsel for other interested parties; legal research; examination of mortgages, leases, contracts, statements and other documents; examination of statues, rules and regulations, as well as orders of the Reorganization Court and other courts and the related petitions and supporting papers; preparation of opinions, memoranda and briefs as well as petitions, orders

and contractual and other documents; appearances before the various courts and the ICC; answering inquiries of Bondholders and others interested in the reorganization, such as certain large insurance companies, which were the holders of very substantial amounts of Bonds, and of Mr. Oscar Gruss, the largest individual holder of Bonds, and from time to time preparing and sending formal printed reports to the Bondholders; and many incidential and related matters.

7. This Court held, in a decision dated July 28, 1969, reported at 304 F. Supp. 1121, that counsel for the Indenture Trustees and others entitled at the time to reimbursement of expenses and to compensation might apply for interim compensation and that such petitions would be entertained. For convenience of reference the pertinent portion of that decision (pages 1126 and 1127) is quoted below:

> The reorganization has presented a myriad of complex legal problems. The resolution of many have ploughed new ground. In the process of working these out through the adversary system, it has been of immense importance to have counsel of outstanding skill and competence to analyze and present the points at issue. Able counsel for the Commission, the Penn Central, the States and certain claimants against the Debtor's estate are, of course, not compensated out of the estate. Counsel for the trustees for the bond issues and for the First Mortgage 4% Bondholders Committee are, however, subject to the provisions of (c)(12). They have devoted an enormous amount of time and energy to the case, and the high order of their professional competence has made a very significant contribution to the reorganization proceedings. Present counsel for the Trustees for the First Mortgage Bonds and counsel for the Trustee for the Income Bonds have participated since the filing of the petition on July 7, 1961. There have been two sets of counsel for the Bondholders Committee, one succeeding the other, and separate counsel has appeared for Oscar Gruss & Son. The Indenture

> Trustees, their counsel and others who are entitled at this time to reimbursement of expenses and to compensation may, if counsel deem it advisable apply for interim allowances, and the court will entertain such petitions. As Penn Central has assumed the Harlem River bonds, to the advantage of their holders, it would appear that the Indenture Trustee for these bonds and its counsel could proceed for final reimbursement of expenses and compensation.

8. The scope and complexity of these reorganization proceedings were unprecedented. Among the novel issues which have been litigated by this time - for the most part advantageously for the Debtor's Estate - are: the constitutional and statutory right of a deficit railroad to obtain liquidation value for its assets, interim relief for an insolvent and deficit railroad to be acquired under Section 5 of the Interstate Commerce Act, the valuation of the Debtor's interests in the so-called "Grand Central Terminal Properties" (the subject of extended, independent hearings before a Special Master of this Court), and the proper protection of the rights of the seller who is not a volunteer against erosion of the value of securities given in payment. Many more years may elapse before these proceedings are concluded. Inasmuch as Petitioners herein have resigned as Corporate Trustee and Successor Individual Trustee, respectively, and since a Successor Trustee has been appointed by the Reorganization Court, we respectfully submit that it is appropriate at this time that Petitioners be compensated for services which they have rendered herein and reimbursed for expenses they have incurred, including the fees and disbursements of ST&B. In that connection, it is to be noted that the services began more than 13 years ago and that the Debtor has

not been called upon to pay (and has not paid) any amount whatsoever for the services rendered by Petitioners and their counsel (or for services rendered by other representatives of the Bondholders), or in repayment of the substantial disbursements made.

9. When the New Haven filed its petition for reorganization, Petitioners and ST&B agreed, in view of the provisions of Section 77 of the Bankruptcy Act, that ST&B would be legally entitled to receive as compensation for its services to Petitioners (and reimbursement for its expenses and disbursements) only such amount as was ultimately found by the courts to be reasonably and properly reimbursable to Petitioners out of the assets of the New Haven. However, ST&B stated that in the event such amount was in ST&B's opinion grossly inadequate, ST&B would come to the Corporate Trustee and ask that it be paid additional compensation out of the Corporate Trustee's own funds. The Corporate Trustee agreed to consider any such request but it was expressly understood that it would be under no legal obligation to comply.

10. As more fully appears from the petition of the Indenture Trustees to which this affidavit is annexed, on July 31, 1967 the Corporate Trustee advanced to ST&B the sum of $91,398.26 for partial payment on account of services rendered and disbursements incurred as described herein, $90,000.00 thereof being for compensation and $1,398.26 being for reimbursement of disbursements incurred. In said petition of the Indenture Trustees it is proposed by

Petitioners and ST&B that the allowance of compensation and disbursements of ST&B as requested therein and in this affidavit be made without regard to said advance of $91,398.26 and that Petitioners shall look to ST&B for the reimbursement of said advance out of the allowance for compensation and disbursements made herein to said firm.

11. The professional services rendered by ST&B to the Indenture Trustees in connection with the reorganization proceeding, the responsibility involved, and the benefits to the Estate of the Debtor are summarized in Appendix 4 attached to this affidavit. The value of such services of ST&B rendered to the Indenture Trustees is not less than $1,700,000.00, plus disbursements of $15,234.81, which disbursements are itemized in Appendix 5 hereto.

12. This application for compensation and for reimbursements of expenses is made pursuant to Section 77(c)(12) of the Bankruptcy Act (11 U.S.C. 205(c)(12)) and pursuant to clause (10) of Section 1 of Article Eleven of the Mortgage which reads in applicable part as follows:

> The Railroad Company covenants and agrees to pay to the Trustees from time to time on demand, reasonable compensation (which shall not be limited by any provision of law with respect to the compensation of fiduciaries or of the trustee of an express trust) for all services rendered by them hereunder and also their reasonable expenses and counsel fees and other disbursements, and those of their attorneys, agents and employees, incurred in the administration and execution of the trusts hereby created and the exercise of their powers and the performance of their duties hereunder.
>
> * * * * * * * * * * * * *
>
> The Trustees shall have a lien on the trust estate and the proceeds thereof, prior to

the lien of the Bonds, for all amounts agreed to be paid by, and for all obligations of, the Railroad Company under this clause (10).

13. This affidavit, including Appendices 1,2,3,4 and 5 hereto, set forth the facts upon which ST&B relies for its compensation and reimbursements. ST&B reserves the right to submit legal memoranda and other supporting evidence, if necessary, to support its claim that it is legally entitled to compensation at the present time as indicated in Paragraph 11 hereof. This paragraph is intended to satisfy the requirements of Rule 49(a) of the Interstate Commerce Commission's Rules of Practice, 49 C.F.R. § 1100.49(a).

14. As required by Rule 51 of the Interstate Commerce Commision's Rules of Practice (49 C.F.R. § 1100.51) (a) the petition of the Indenture Trustees to which this affidavit is annexed, (b) this affidavit, as well as Appendices 1,2,3,4 and 5 hereto, and (c) ST&B's relevant time and expense records are stated to be the evidence on which ST&B relies in this proceeding.

15. As required by Rule 250(d)(1) of the Interstate Commerce Commission's Rules of Practice, 49 C.F.R. § 1100.250(d)(1), I hereby aver that the application of ST&B for compensation should not have any effect, adverse or beneficial, on the quality of the human environment.

16. Deponent's firm has not entered into any agreement, expressed or implied, with any other party in interest in the proceeding, including the Debtor, any creditor, the Trustees of the Debtor, or any representative of any of them, or with any attorney for any such party in

interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the Estate, and no agreement or understanding exists between my said firm and any other person for a division of any such compensation.

17. In view of the long period of time during which the services were rendered and the probability that substantial further time will elapse before the Interstate Commerce Commission renders its report on this application, it would be appropriate that Petitioners and their counsel be granted an advance payment on account of their application for compensation and reimbursement of disbursements, in such amount as may be found to be just and proper.

WHEREFORE, I respectfully pray that this Court:

(1) Enter an order for transmittal by the Clerk of this Court to the Interstate Commerce Commission of copies of the Petition of Manufacturers Hanover Trust Company, as Corporate Trustee, and A. Frederick Keuthen, as Successor Individual Trustee, for allowance for expenses incurred and for compensation for services rendered, including this affidavit and the appendices thereto, and of such order, to the end that the Interstate Commerce Commision, upon receipt of such copies, may fix the maximum limits for the allowance to be made for compensation of said Petitioners and for reimbursement of expenses, including an allowance to Simpson Thacher & Bartlett for compensation for services rendered and for reimbursement of expenses, all as set forth in this affidavit;

(2) At the time of entering the aforesaid order to fix such advances, in the nature of interim payments on account of the payments to be directed under paragraph (3) thereof, as may be shown to be just and proper; and

(3) Reserve jurisdiction to consider and pass upon the allowance of compensation to Petitioners for services rendered and for reimbursement of expenses incurred, including the allowance of compensation to their counsel, Simpson Thacher & Bartlett, and the reimbursement of expenses of said counsel, upon receipt by this Court of the report of the Interstate Commerce Commission fixing said maximum limits of allowance for compensation and reimbursement of expenses.

Horace J. McAfee

Subscribed and sworn to
before me this 26th day
of June, 1975.

Tina A. Klapatosk
Notary Public

TINA A. KLAPATOSK
Notary Public, State of New York
No. 60-4679315, Qualified in Westchester Cnty
Certificate Filed in New York Cnty
Commission Expires March 30, 1977

APPENDIX 4 TO AFFIDAVIT OF HORACE J. McAFEE

A 1 12

SERVICES RENDERED BY SIMPSON THACHER & BARTLETT TO MANUFACTURERS HANOVER TRUST COMPANY, AS CORPORATE TRUSTEE, AND TO A. FREDERICK KEUTHEN, AS INDIVIDUAL TRUSTEE, UNDER FIRST AND REFUNDING MORTGAGE DATED AS OF JULY 1, 1947, OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY IN CONNECTION WITH THE REORGANIZATION OF THAT COMPANY

Services during period July 1, 1961 to early 1972 except those relating to "Six-Months Claims" and litigation before the I.C.C. and the Courts as to sale of the New Haven assets to Penn Central.

On July 1, 1961, the New York, New Haven and Hartford Railroad Company (the "New Haven" or the "Railroad") failed to pay the interest due that day on its First and Refunding Mortgage Bonds (the "Bonds"), which Bonds had been issued under the First and Refunding Mortgage dated as of July 1, 1947 (the "Indenture") of the Railroad in the original principal amount of $95,703,700. Manufacturers Hanover Trust Company (then "Manufacturers Trust Company") was Corporate Trustee under the Indenture and A. Frederick Keuthen was successor individual trustee thereunder (the "Individual Trustee")*. As a result of the default, a number of conferences were held among Mr. Horace J. McAfee, a Senior Partner of Simpson Thacher & Bartlett ("ST&B") and various officers of Manufacturers Hanover Trust Company ("Manufacturers Hanover") the Corporate Trustee under the Indenture (the "Corporate Trustee") in order to be sure that all necessary action was taken to protect the interests of the holders of the Bonds (the "Bondholders"). It

*The Hanover Bank and Manufacturers Trust Company merged on September 8, 1961 with Manufacturers Trust Company being the surviving corporation under the name of Manufacturers Hanover Trust Company. Prior to the merger the Hanover Bank had not acted as trustee under any indenture of the Railroad and Simpson Thacher & Bartlett ("ST&B") did not represent the Hanover Bank. After the merger ST&B continued to act as counsel for Manufacturers Hanover and Mr. Keuther as Trustees under the Indenture.

was assumed that the Railroad would file a petition under Section 77 of the Bankruptcy Act and on July 7, 1961 such a petition was filed in the United States District Court for the District of Connecticut (the "Reorganization Court") and was approved as properly filed by the Honorable Robert P. Anderson, District Judge. The petition stated that for the remainder of 1961 the Railroad would have funds of $9,262,000 with which to meet obligations of $33,480,000, was unable to meet its debts as they matured, and that it desired to effect a plan of reorganization pursuant to Section 77 of the Bankruptcy Act.

Mr. J. Ronald Wolfe, an associate of ST&B who has since become a partner, was assigned to research various questions which had arisen or were expected to arise as a result of the default under the Indenture and the filing of the petition pursuant to Section 77. Among others, these questions related to the obligation of the Corporate Trustee to furnish a list of the Bondholders and related information to the Trustees to be appointed by the Reorganization Court (the "Railroad Trustees"), the right of the Corporate Trustee to act as a depositary of funds of the Railroad, and the position of the Corporate Trustee in the event the Railroad Trustees were to petition for authority to issue trustees' certificates. There were many telephone conversations with counsel for and officers of the Railroad in New Haven and also with counsel for The Chase Manhattan Bank, the Corporate Trustee under the Indenture securing the Railroad's General Mortgage Income Bonds ("Chase Manhattan"). Most of the work

in this connection other than the research work of Wolfe was handled by McAfee, who at times conferred with Mr. Oswald L. Johnston, another Senior Member of ST&B, the partner with complete overall responsibility in connection with its representation of Manufacturers Hanover. As soon as the default occurred under the Indenture, it was necessary for Manufacturers Hanover to ascertain whether or not it had any conflicting interest, whether as a lender or otherwise, because it was assumed that if there were no conflicts it would continue to act as Corporate Trustee under the Indenture. In this connection, Johnston and McAfee conferred with Mr. Horace Flanigan, Chairman of Manufacturers Hanover, as to the overall situation and as to the necessity for Manufacturers Hanover continuing to act for the Bondholders.

Wolfe also proceeded to draft the necessary petition, court order and bond for the appointment of Manufacturers Hanover as depositary in the District of Connecticut. At the same time it was determined that a petition should be filed by Manufacturers Hanover with the Reorganization Court for leave to intervene in the reorganization proceeding. McAfee then began to assemble the necessary information for the preparation of the petition to intervene and also discussed the general problem of intervention with counsel for Chase Manhattan and counsel for United States Trust Company of New York, trustee under the Harlem River Division Mortgage ("U.S. Trust"). This activity was also directed to making certain that there would be no conflict of interest in Manufacturers Hanover continuing to act as Corporate Trustee. This investigation required several conferences with officers and employees of

Manufacturers Hanover and examination of certain records relating to the trust. Upon completion of the petition to intervene (14 pages), a court order was prepared for submission to Judge Anderson and the subject was discussed with him at a conference in chambers on July 26. The order permitting the Corporate Trustee and the Individual Trustee to intervene was signed September 6, 1961.

In connection with the problem of intervening, it was necessary to examine the court rules and to consider the advisability of employing local counsel in New Haven. This matter was discussed with an attorney in New Haven, well-known to ST&B, but the problem became academic when Judge Anderson ruled that lawyers admitted to practice before the Federal Court in any of the states through which the Railroad ran would be permitted to appear before the Reorganization Court.

On July 25, 1961 McAfee appeared in the Reorganization Court with the Individual Trustee at the hearing called to consider the appointment of trustees for the New Haven. By order dated July 26, 1961, the Reorganization Court appointed Richard Joyce Smith, William J. Kirk and Harry W. Dorigan as Trustees, which appointments were later ratified by the Interstate Commerce Commission by order dated August 2, 1961.

One of the pressing problems of the New Haven was the need for immediate funds. Consequently, on July 18, 1961 the New Haven applied for permission to issue $5,000,000 of Trustees' Certificates with priority over previously outstanding obligations. McAfee conferred with various counsel regarding the position they proposed to take on the application

for such certificates and Wolfe prepared a legal memorandum on this question. McAfee then began the preparation of a statement of position of Manufacturers Hanover in respect of such certificates and the Trustee's application for authority to sell them. On August 3 McAfee attended the hearing in New Haven on the application, examined certain witnesses and stated the position of Manufacturers Hanover. On August 2, 1961 the I.C.C. approved the issuance of $5,000,000 of such certificates to be guaranteed under Part V of the Interstate Commerce Act. On August 4 the Reorganization Court granted the petition and the New Haven obtained the funds.

At this time, John R. Cannell, another associate of ST&B who has since become a partner, was assigned to research the law and prepare a memorandum on the right of the Reorganization Court to authorize the Railroad Trustees to sell property mortgaged under the Indenture as security for the Bonds and to withdraw the cash proceeds upon certifying a like amount of net Additions and Betterments to the Corporate Trustee. This memorandum and the related supplemental memoranda required much research and a number of conferences among McAfee, Robert J. McKean, Jr. (an associate of ST&B who became a partner January 1, 1961 and later a Senior Partner of the firm) and certain officers of the Corporate Trustee before a decision could be reached as to the position the Corporate Trustee should take.

Prior to the bankruptcy of the New Haven, the Railroad had entered into an agreement with Jet Lines, Inc., a common carrier of petroleum products, to sell it an easement along the Railroad's right-of-way for an oil pipe line between New Haven, Connecticut and Springfield, Massachusetts.

The sale would produce minimum revenues to the New Haven of $50,000 per year for 25 years and $100,000 per year for an additional 25 years if certain options were exercised. During the fall of 1961, McAfee and Cannell researched and considered a variety of legal matters in connection with this proposed transaction. One memorandum relating to Jet Lines and another regarding the construction of a warehouse were prepared and sent to the Reorganization Court during this time. On November 13 the Reorganization Court authorized the sale, free of any lien.

By petition dated September 28, 1961, the Railroad Trustees sought authority to file with the I.C.C. an application to issue Trustees' Certificates in an additional aggregate principal amount of $15,000,000. On October 16 McAfee and Keuthen attended a conference on this and other matters in New Haven with the three Railroad Trustees and with other counsel involved in the proceeding and the following day attended the hearing before the Reorganization Court on the application, which had been reduced by amendment to $7,500,000. Thereafter, by order of the Commission dated December 7, 1961, the issuance of the Trustees' Certificates was approved. After the hearing on October 17 McAfee and Keuthen attended a meeting with Mr. Gerdes Kuhbach, who was acting as counsel for the Railroad, and with Mr. O'Neil, its treasurer, and other counsel involved, to discuss the problems relating to the sale of property mortgaged under the Indenture and the withdrawal of the proceeds of such sale upon the certification of net Additions and Betterments.

Throughout this period, both McAfee and McKean reviewed the petitions and applications of the Railroad Trustees for the variety of orders necessary for the day-to-day

operation of the Railroad and frequently discussed them in advance with counsel for the Railroad Trustees. This usually made it possible for Manufacturers Hanover to determine its position before the hearing and many times made it unnecessary for its counsel to attend the hearing. The petititons received during this period included, among many others, applications with respect to New England Transportation Company, the abandonment of certain lines of track, the assumption of various equipment trust obligations, and the employment of experts in different locations to sell various parcels of real estate and unused equipment.

On November 20, 1961, the Reorganization Court held a hearing to determine the use of the proceeds of the sale of released property. McAfee attended these hearings in New Haven before Judge Anderson and presented the position of the Corporate Trustee at the oral argument, stating that Manufacturers Hanover was opposed to the petition on the grounds that whatever Additions and Betterments might be so paid for out of such funds would not provide the Bondholders with a security value equivalent to the cash which was proposed to be withdrawn. On December 29, 1961, Judge Anderson signed Order No. 45 granting the Trustees' petition. McAfee then discussed the impact of this decision and the advisability of an appeal with certain officers of the Corporate Trustee and also with various other counsel.

Manufacturers Hanover as Corporate Trustee was in possession of certain securities owned by the New Haven and pledgedunder the Indenture. In December 1961, McAfee drafted a petition for an order providing that any dividends and distributions received on such stock be deposited in the Registry of the Court. The Court granted this petition after

McKean attended a hearing on it on December 18 in New Haven.

At the beginning of 1962, McKean and McAfee gave consideration to the advisability of appealing from Judge Anderson's adverse decision in Order No. 45 (referred to above) and continued to review various petitions and orders. On February 9, Richard Hawkins, another partner of ST&B, attended a hearing in New Haven on certain Trustees' petitions and on February 26 McKean attended a hearing in New Haven on certain other petitions. On February 28, McAfee attended a hearing in New Haven upon the petition of the Railroad Trustees for authority to lease 100 passenger cars from the Port of New York Authority and cross-examined two of the witnesses for the Railroad Trustees. Thereafter McAfee received numerous calls from other counsel and representatives of Bondholders with respect to the effect of the application and, particularly, as to the applicability of the provisions of the New York tax law relating to tax relief for the year beginning July 1, 1962.

During April 1962, McAfee and McKean were frequently consulted by Manufacturers Hanover about the problems arising out of requests for the payment of coupons deposited with the Corporate Trustee before bankruptcy and various other facets of the Trustees' role in light of the bankruptcy.

At this time it was necessary to consult with certain of the other counsel involved regarding the proofs of claim of Chase Manhattan and U.S. Trust. McKean also prepared the proof of claim of the Corporate Trustee and the Individual Trustee for the benefit of the holders of the Bonds issued under the Indenture and holders of coupons and claims for interest appertaining thereto. The proof of claim stated that there was then due and payable

on the outstanding Bonds the principal amount of $99,005,100, plus interest accrued from and after January 1, 1961. This claim was executed March 28, 1962 and duly filed.

On April 19, 1962, the Railroad Trustees petitioned the Court for an order authorizing the purchase of 8,106 shares of stock of Boston and Providence Railroad Corporation (the "B&P") at $105 per share pursuant to an option granted April 28, 1962. McAfee considered and discussed with Manufacturers Hanover the problems involved on this acquisition and on April 27 attended a hearing before the Reorganization Court on the application which was thereafter granted. After the hearing McAfee and Keuthen conferred with Trustees Kirk and Dorigan, and also with Mr. Arkush, counsel for the Committee of Stockholders of the B&P.

By April 1962, the Railroad Trustees had found the limitations of Order No. 45 dealing with sales of released property and the application of the proceeds thereof to Additions and Betterments to be too restrictive. On April 9, 1962, the Railroad Trustees applied for an order increasing the limit on the total of such expenditures from $100,000 to $400,000. Manufacturers Hanover opposed such increase, and McAfee prepared and sent to the Reorganization Court a letter stating its position. On April 19, 1962, the Court granted an increase in the ceiling amount of Order No. 45, but limited the increase to $300,000. (Later in 1962 this amount was increased to $650,000 after a hearing on the Railroad Trustees' petition.)

On May 23, McAfee attended a meeting at the Fifth Avenue and 43rd Street office of Manufacturers Hanover which was attended by the three Railroad Trustees and others from

the Railroad, three officers of Manufacturers Hanover, representatives of certain insurance companies which were major holders of mortgage bonds and other mortgage trustees at which various topics were discussed. On November 14, a further meeting with the three Railroad Trustees was held at the same office at which time McAfee and twenty or more representatives of the Railroad and Bondholders were present. On November 3, McKean and McAfee attended a meeting at the 70 Broadway boardroom of the Corporate Trustee with Mr. Dorigan, one of the Railroad Trustees, and five of his representatives, together with about twenty other representatives of insurance companies and other Bondholders to discuss, among other problems, the release of property and the withdrawal of proceeds against the certification of net Additions and Betterments.

In connection with the funds in the released property account, Cannell was asked to consider the status of the lien of the Corporate Trustee if funds in excess of $300,000 were withdrawn and also the request of the Railroad Trustees for the release of certain funds deposited prior to bankruptcy. It was decided to oppose any such request.

Since the Corporate Trustee held certain securities owned by the New Haven, it was necessary for Cannell to examine and analyze proxy statements and other communications from several companies at various times during the year.

Also in connection with the use of proceeds of the sale of released property, certain questions arose regarding the use of payments on the equipment trust obligations for credit against property sold for scrap. This entailed McKean's attendance at two conferences and legal research by Cannell.

During this period, McAfee considered the question whether funds in the Corporate Trustee's hands prior to bankruptcy were subject to the lien of the Trustee's Certificates, of which $12,500,000 had been sold up to that point. All of the foregoing necessitated detailed examination of the Indenture as well as voluminous case law by McAfee and Cannell to prepare for conferences among the parties at which McAfee presented the position of the Corporate Trustee. On October 8, 1962, McKean and McAfee attended a conference of the representatives of all parties to the reorganization at the office of Manufacturers Hanover and presented the position of Manufacturers Hanover that funds in its hands as Corporate Trustee prior to bankruptcy were not subject to the lien of the Trustees' Certificates. At the same time, certain other questions were discussed including particularly a question regarding the sale of properties of New Haven subsidiaries. It was the view of Manufacturers Hanover that such sales and the use of any proceeds thereof should be restricted in order to protect the Bondholders' interests. After this discussion, it was decided to apply for a hearing before the Reorganization Court regarding these matters. The hearing on this question was held on November 20 and McAfee argued the position of the Corporate Trustee.

During June 1962, the Railroad Trustees came to the conclusion that it would be desirable to include the New Haven in the proposed New York Central-Pennsylvania Railroad Company merger and applied for leave to file a petition to intervene in those hearings with the I.C.C. This petition was granted on June 19, 1962, and McAfee attended the hearings thereon in New Haven after a discussion with Professor James William Moore,

the Railroad Trustees Counsel. Thereafter McAfee and McKean considered the possibility of Manufacturers Hanover's intervention in the I.C.C. merger hearings.

The Railroad Trustees on October 18 applied to the Reorganization Court for an order directing that certain funds held by the United States representing distributions on Flood Loan Collateral be applied to the reduction of the outstanding principal of the Railroad's Flood Loan notes. After considerable research by Wolfe into the rights of the pledgee of collateral for such notes, it was decided that Manufacturers Hanover would not oppose such an order.

McAfee, and at other times McKean, continued to attend various hearings in New Haven before Judge Anderson on the petitions of the Railroad Trustees and other parties. These appearances generally involved review of the subject of the petition, any necessary analysis of legal points that might be in dispute, a discussion with one or more officers of Manufacturers Hanover and at times with representatives of other interested parties, as well as a minimum of a half-day's time in New Haven. Frequently, the preparation of testimony and the examination or cross-examination of witnesses would be required as well. In addition to court appearances, McAfee, McKean and Cannell, and occasionally other associates of ST&B, attended frequent conferences in New York City and elsewhere among the various parties to facilitate the understanding of divergent points of view. They also engaged in a continual review of the many petitions to and orders of the Reorganization Court which arose in the more or less regular course of the reorganization, in order to protect the interests of the Bondholders. This required frequent telephone conversations

and conferences with counsel for the Railroad Trustees and, at times, other representatives of Bondholders in order that the Bondholders' interests might be protected without obstructing or delaying the work of the Railroad Trustees or the Reorganization Court.

On October 8, McKean and McAfee attended a meeting at the office of Manufacturers Hanover with certain of its officers and certain officers of and counsel for Chase Manhattan and seven representatives of the Railroad to discuss the sale of property and the withdrawal of the proceeds thereof, including proceeds of property released prior to bankruptcy and, among related questions, whether equipment trust payments qualified as Additions and Betterments. On November 5, they also attended another conference on substantially the same subjects, including the Railroad's Report No. 1 on expenditures for Additions and Betterments and sales of property. At this conference representatives of the Railroad and of Manufacturers Hanover and Chase Manhattan were present.

During the remainder of 1962 the work of McKean and McAfee consisted primarily of a continuing review of certain petitions and orders and consideration of the problems presented thereby. One problem resulted from the proposed de-listing of the Bonds and the common stock of the Railroad. The matter of de-listing was discussed with officers of Manufacturers Hanover, counsel for the Railroad Trustees and representatives of the New York Stock Exchange.

At the beginning of 1963, the Railroad Trustees proposed to withdraw from the Registry of the Court some $260,000 of the proceeds of the sale of obsolete locomotives and gondola cars. McKean began research and discussions to formulate the position of Manufacturers Hanover regarding this proposal and discussed the matter with McAfee.

The legal questions involved determination of the precise meaning of the term "equipment" under the Indenture and the General Income Mortgage and the application of different restrictions therein to the use of proceeds generated by the disposal of each type of "equipment". This involved detailed analysis of both the indentures involved, as well as applicable case law, and conferences with counsel for the Railroad Trustees and representatives of Chase Manhattan. Over the next two months, these efforts resulted in reaching positions mutually acceptable to the Railroad Trustees and the trustees under the two system mortgages.

On February 20, 1963, the Railroad Trustees presented a petition to the Court requesting the withdrawal of the funds. By joint cross-petition dated February 25, 1963 of Manufacturers Hanover and Chase Manhattan, the petitioners asked the Reorganization Court, in passing upon the petition of the Railroad Trustees, to determine the several questions relating to the term "equipment" which were set forth in the joint cross-petition. On March 18, 1963, McAfee attended the hearing before Judge Anderson in New Haven on the petitions. The order of the Court, signed on March 21, 1963, ratified the positions of the petitioners and directed the payment of $259,143.45 to the Railroad Trustees.

In the early part of 1963, the Railroad Trustees sought court approval to extend the lease with the Port of New York Authority, which had been entered into pursuant to Order No. 81 dated February 28, 1962, to include an additional 50 multiple-unit commuter cars during 1963. McKean conferred with officers of the Corporate Trustee to determine its position as to this additional lease and discussed the matter with

McAfee and certain counsel for other parties including Professor Moore. Due to the terms of Order No. 81, as supplemented, a decision had to be reached by the Reorganization Court prior to January 31, 1963. During this period McKean and McAfee examined the lease, its proposed amendments and the draft notice and court order, making suggestions and revisions reflecting Manufacturers Hanover's position. On January 25, certain changes were made in the draft lease to accommodate certain objections of Manufacturers Hanover. On January 29, McAfee attended the hearing in New Haven before Judge Anderson and stated the position of Manufacturers Hanover in opposition to the application.

On January 31, 1963, the Reorganization Court handed down its decision approving the leasing of 50 additional commuter cars, predicated on the satisfaction of certain conditions, and over the next week McAfee discussed the implications of this order with the other parties who had opposed the application. Part of the Court's decision included the deletion of restrictions against terminating certain portions of the New Haven's commuter service. At this time, McAfee began considering with Manufacturers Hanover the possibility of appealing the Reorganization Court's order, but the question became moot on February 11 when the Port Authority informed all parties that it would not accept the conditions to the lease imposed by Judge Anderson and exercised its option to terminate the lease without liability.

The termination of the lease resulted in a bill introduced in the New York State Senate in Albany, to amend the New York State Real Property Tax Law to eliminate the

tax credits the Railroad had enjoyed by virtue of its lease with the Port Authority and any future tax relief for the Railroad. This necessitated several conferences among McAfee, McKean, other counsel and the Railroad Trustees on the impact of such legislation on the Railroad and positions to be taken in response to the bill. On March 12, McAfee learned that the Albany bill had been killed in Committee and no longer posed a threat to the Railroad. However, all interested parties were soon to learn, to their great surprise, that during the last days of the session (March 21) a new tax bill, Senate No. 3727, had been introduced in Albany which would eliminate any tax relief for the Railroad. McAfee and McKean with all the other interested parties bent every effort to prevent passage of the bill. After appropriate consultation McKean prepared and sent a telegram to the Chairman of the Rules Committee stating such opposition.

Work by both McAfee and McKean against passage of this bill continued but the bill was approved on April 5, 1963. On April 10, a meeting was held at the office of Manufacturers Hanover between certain of its officers and its counsel and various counsel and other representatives of the Bondholders and other creditors to consider the problems presented by the bill and to set up a conference with the Railroad Trustees as to the effects of the bill and as to related matters. At the same time, McKean assisted in preparing a uniform letter presenting the position of Manufacturers Hanover, Chase Manhattan, and U.S. Trust regarding the tax bill. On April 24, McAfee attended a meeting with Mr. Smith, one of the Railroad Trustees, and representatives of the other interested

parties and discussed the probability that the Governor would sign the tax bill as passed. At the same time McAfee began discussions with officers of Manufacturers Hanover as to action which might be taken to protect the Bondholders in view of the Railroad's continuing losses. In May, it appeared that there might be a possibility of the Railroad's leasing 100 commuter cars from the Port Authority to solve the tax dilemma, but no agreement was ever reached.

Once again, in June 1963, the Railroad Trustees stated that they proposed to petition the Court for an order directing Manufacturers Hanover to release about $300,000 it held representing the sales of released property. A copy of the proposed petition was sent to Manufacturers Hanover for its comments and Cannell was asked to examine the case law as to whether or not Manufacturers Hanover could refuse to do so. McAfee supervised this matter while also investigating with Robert Blanchette, counsel for the New Haven, and Professor Moore the possibilities for paying the New York real estate taxes. If $600,000 of such taxes could be paid, the Railroad would be entitled to the benefit of a tax credit of $2,000,000 and McAfee began pursuing this approach with representatives of Chase Manhattan and U.S. Trust and the Port Authority. On July 1, McAfee discussed with Mr. Gerdes Kuhbach, the Director of Finance of the Port Authority, certain matters relating to the proposed leasing of cars and the effect of the punitive tax law rushed through the legislature at the end of its last session. On July 8, McAfee took up this and other matters in a conference at Trustee Smith's office with the Railroad Trustees and various other counsel.

In view of the Railroad Trustees' application to withdraw an additional $353,000 from the sale of released property, McAfee reviewed Order No. 45 and the applicable case law as found by Cannell to determine if any steps could be taken to increase the protection of the Bondholders.

During the summer of 1963, McAfee examined various petitions, including fee applications, and did research in connection with the litigation with the New York Central Railroad over the Biltmore Hotel. That case involved the New Haven's interest in the Biltmore, and, in principle, its interest in many of the so-called "outside properties" adjacent to and surrounding Grand Central Terminal. In connection with that case, a question arose as to the compensation of the Railroad's special counsel. Anthony Fletcher, another associate of ST&B, assisted in the legal research on the power of the I.C.C. to fix legal fees of attorneys for a Railroad undergoing reorganization pursuant to §77 of the Bankruptcy Act. McAfee also reviewed this research and consulted with McKean on the position to be taken by Manufacturers Hanover on the application by the attorneys who had represented the Railroad in the Biltmore case. A conference was held on July 23 at the office of Manufacturers Hanover among various of its officers and McAfee and counsel for other parties to discuss the foregoing and also the situation resulting from the decision of the Railroad Trustees not to terminate the West End commuter service. On August 23, McAfee attended a conference in New Haven with Professor Moore and Mr. Blanchette regarding the proposed settlement for $75,000 of the claims of New York Central to the proceeds of its Biltmore judgment and also as to the jurisdiction of the I.C.C. over the fees of counsel involved in the Biltmore case.

Thereafter he attended a hearing before Judge Anderson on these matters and stated the position of Manufacturers Hanover. At the same time, McKean reviewed the proposed brief of the Railroad in opposition to the petition of the New York Central and the United States to offset the proceeds of the Biltmore litigation against certain of their claims.

On September 6, McAfee attended a conference at the office of Trustee Smith with Trustees Smith and Dorigan and Professor Moore as well as officers of the Corporate Trustee and counsel for the Committee to discuss possible action to expedite the reorganization. On October 4, McAfee attended a meeting at Manufacturers Hanover with its officers, officers of Chase Manhattan and their counsel and counsel for the First Mortgage Bondholders Committee (the "Committee") as to the problems facing the Bondholders. Finally, in February 1964, both the United States and the New York Central settled their claims for substantially smaller amounts than originally asked for and withdrew all remaining claims.

In October of 1963, the Department of Justice announced its opposition to the proposed New York Central-Pennsylvania Railroad merger. Since this merger was deemed to be in the best interests of the Bondholders if the New Haven could be included therein, McAfee began consulting with Professor Moore and with officers of Manufacturers Hanover, Chase Manhattan and U.S. Trust and their counsel as well as counsel for the Committee on the impact of the opposition of the Department of Justice. A meeting to discuss the problem and possible approaches of the parties was held at McAfee's office on October 9 at the request of Professor Moore.

Meanwhile, the B&P had been forced into reorganization. The interest of the New Haven in this matter arose from the fact that most of the New Haven's line between Providence and Boston was owned by B&P. The New Haven had operated this portion of its line under a lease from B&P until it was rejected by the Railroad Trustees with the approval of the Reorganization Court. In fact, it was this rejection which forced the B&P into reorganization. In the fall of 1963, a Committee of the Stockholders of B&P submitted a proposed Plan of Reorganization involving the sale of substantially all the B&P's property to the New Haven. During the last three months of 1963, McAfee and McKean expended considerable time and effort analyzing the proposed plans involving B&P and considering the problems involved. On December 23, 1963, the Railroad Trustees petitioned the Reorganization Court for permission to support the plan of the B&P Stockholders' Committee. During this period, numerous conferences with officers of Manufacturers Hanover, and the various counsel for the other parties were necessary in connection with the B&P matter; these conferences and other work concerning the B&P matter continued throughout the remainder of 1963 and well into 1964. The practical effect of this development was that for a considerable period of time McAfee and McKean and the various associates working with them were looking after the interests of Manufacturers Hanover and the Bondholders in two separate and simultaneous Railroad reorganizations.

During December 1963, the Providence Produce Warehouse Co., a wholly-owned subsidiary of the New Haven, announced that it would make partial interest payments on its outstanding notes held by the Railroad in the amount of $250,000. The Railroad Trustees decided to apply for permission to take that payment and apply it to the purchase of Harlem River Division Bonds. McAfee began consideration of the question as to whether such funds were not required to be paid into the Registry of the Court and conferred with Blanchette in New Haven on the question of a lien by the Corporate Trustee on the $250,000 payment. A conference was held on January 6, 1964 among the various parties to discuss the positions to be taken and stipulations to be made at a hearing to be held on January 10. After such hearing, Judge Anderson authorized the Railroad Trustees to receive the $250,000 interest payment without the same having to be paid into the Court Registry.

During February and March 1964, McAfee was concerned primarily with the continuing matter of the B&P reorganization, while McKean prepared a memorandum in opposition to the application of Sullivan & Cromwell for $300,000 in fees for services as special counsel to the Railroad in the Biltmore litigation. Such application had the support of the Railroad Trustees and was granted by the Reorganization Court on February 26, 1964, after a hearing before Judge Anderson on February 24 which was attended by McKean who presented the position of the Corporate Trustee. At the request of the Court Manufacturers Hanover waived its right to appeal the determination of the fee, all other parties having also waived such right. Prior

thereto, McAfee and McKean had held an all-day meeting at the office of Manufacturers Hanover with Professor Moore, officers of Manufacturers Hanover and representatives of and counsel for all parties regarding the fee application and several matters relating to the B&P reorganization.

On March 2, 1964, Judge Anderson held the first New Haven hearing with respect to the petition of the Railroad Trustees to support the B&P Plan of Reorganization. McKean attended the all-day session and presented the position of the Corporate Trustee. At this time, several miscellaneous petitions and orders in the B&P matter had to be reviewed, including papers in an action to quiet title to certain properties of the B&P. By order entered March 18, Judge Anderson permitted the Railroad Trustees to support the proposed B&P Plan.

In late March 1964, the Railroad began negotiations to lease 75 to 80 cars from the Port Authority. Such a lease, if consummated, would result in favorable tax consequences to the Railroad. These negotiations continued through June, at which point McAfee began examining the proposed lease, comparing it with earlier such documents, and discussing various problems that his review of the lease raised with Professor Moore. On June 11, Judge Anderson held a pretrial conference with the various parties including Mr. Goldstein and Professor Seligson, counsel for Port Authority, to discuss the proposed lease of 80 new cars and the related rehabilitation program for up to 100 of the Railroad's old cars. McAfee was present at this conference and thereafter prepared a memorandum analyzing the advantages and disadvantages of the proposed lease and rehabilitation

program. On June 16, four officers of Manufacturers Hanover, together with McAfee and representatives of the other interested parties, attended a meeting with the three Railroad Trustees at which the proposed lease and rehabilitation program, as well as the negotiations with Penn Central and the problems relating to the B&P, were discussed. Later in the day it was learned that the car lease would not be signed because of the request of the Port Authority for a provision in the lease which could not be accepted by the Railroad Trustees. Later in the month the Port Authority receded from its position and the negotiations continued. At this point McKean reviewed the petition of the Railroad Trustees for the approval of the lease which was filed with Judge Anderson on June 24, 1964.

On June 30, McAfee attended a hearing in New Haven before Judge Anderson on the proposed lease, after which an order was entered approving it as to 80 new cars and 50 rehabilitated cars. However, the Court imposed as conditions subsequent to the lease a requirement that the Railroad conclude appropriate contracts with the State of Connecticut and Westchester County for sharing the expenses of commuter service in those areas prior to September 30, 1964. On September 21, the Board of Supervisors of Westchester County rejected a proposed contract with the Railroad, and on September 28, McAfee attended a hearing before Judge Anderson in New Haven at which the Court determined that the conditions subsequent had not been performed and the lease was thereby terminated.

During July and August of 1964, McAfee and McKean continued work on the B&P matter, including examining the changes in the reorganization plan proposed by

various parties, while McKean was concerned with a proposal of the Railroad to abandon a portion of the Cape Cod line. A hearing was held on the latter matter on July 27 which McKean attended on behalf of the Corporate Trustee. At this point, another associate of ST&B, Martin D. Krall, spent a number of hours investigating and preparing a memorandum on the general powers of the I.C.C. in a reorganization proceeding, with particular reference to directing the abandonment of certain portions of the Railroad's service pursuant to a plan of reorganization. On August 4, McAfee attended a meeting at The Chase Manhattan Bank with Trustee Dorigan and Professor Moore and with representatives of The Chase Manhattan Bank and United States Trust Company regarding the B&P Plan of Reorganization, particularly with respect to the "windfall" provisions and certain other proposed amendments.

On September 21, McAfee attended an all-day meeting in New Haven with Trustee Dorigan and counsel for the various parties, including the B&P and the United States Government, to discuss changes in the proposed reorganization plan for the B&P. The next day, he reported the results of the meeting and the changes adopted to Keuthen, who had been unable to attend.

On November 17, McAfee and certain officers of the Corporate Trustee attended a meeting at its Fifth Avenue Branch with the Railroad Trustees and their counsel and the representatives of the various parties in interest to hear a report by the Railroad Trustees on the subject of obtaining funds to complete the B&P reorganization, the negotiations with Penn Central and, of most significance, the opinions of the Railroad Trustees as to the

value of the Grand Central Terminal properties to the Railroad. Afterwards, a second meeting was held with various officers of the Corporate Trustee to discuss the views of the Railroad Trustees as to the value of the Grand Central properties and its bearing on the problems of reorganization and to consider the position of the Corporate Trustee in the final stages of the B&P proceedings.

Thereafter, Professor Moore and Mr. Corbin, one of his associates, discussed with McAfee the possibility of using funds in the Court Registry to complete the New Haven's acquisition of the B&P. Also under discussion at this time was the question of the proper valuation of the B&P's assets. McAfee's review of the B&P reorganization proceedings extended on into 1965. He continued to discuss the many changes in the B&P plan with various parties, and considered, with the officers of the Corporate Trustee, the various problems of the Railroad's commuter service as a result of the termination of the conditional lease with the Port Authority.

As an outgrowth of the Approval by the Reorganization Court of the Plan of Reorganization of the B&P, two installment payments of $150,000 each were made by the New Haven in 1964 and 1965 to the United States as part of the installment plan to pay off the B&P's obligations. These payments were made from the New Haven's treasury and on May 7, 1965, the Reorganization Court approved the Railroad Trustees' application to reimburse that treasury by drawing $300,000 of proceeds from the sale of released property deposited in the Registry of the Court.

During the first quarter of 1965, two matters arose which were of great importance to the continuation of service by the New Haven. First, it became known that negotiations between the Railroad Trustees and the Pennsylvania and New York Central railroads had reached the point that an offer to the New Haven for inclusion in the proposed Penn Central merger was about to be made. Second, on January 18, 1965, the Railroad Trustees petitioned the Reorganization Court for permission to institute proceedings before appropriate public bodies to discontinue all passenger service by the New Haven. After a hearing in New Haven on February 4, attended by McAfee, Judge Anderson, on February 15, granted permission to pursue that possibility. Prior to that decision, McAfee had met with officers of the Corporate Trustee to discuss the position that should be taken by the Corporate Trustee on this application of the Railroad Trustees. A second conference was held with various counsel in New Haven immediately prior to Judge Anderson's hearing. After the order was handed down, McAfee analyzed the Court's decision and discussed his conclusions with Keuthen and Blanchette.

The possibility of inclusion of the New Haven in the Penn Central merger immediately involved McAfee in conferences with Blanchette in New Haven and in the opening phases of the question of valuing the assets of the New Haven - a question that was not ultimately resolved until after several years of highly complex litigation which reached the Supreme Court. One problem that arose immediately in that context (i.e., about February 15) was that the Railroad Trustees were unwilling to

discuss with McAfee and counsel for The Chase Manhattan Bank the information that was being furnished to them by the Penn Central. On March 31, the Penn Central offer was made public at a press conference, and McAfee and McKean met to discuss the pros and cons of the offer from the standpoint of the Corporate Trustee. On the same day, an associate at the firm's Washington office, Thomas Carney, obtained a copy of the I.C.C. hearing examiners' recommended decision on the proposed Penn Central merger and forwarded it to McAfee, who began to analyze it and then proceeded to discuss its impact with officers of the Corporate Trustee and various of the other counsel.

The discussions of the Examiners Report and meetings with the Railroad Trustees to learn more about the Penn Central offer by both McAfee and McKean continued through April and May of 1965. At this point, McAfee, McKean, officers of the Corporate Trustee and other counsel began to formulate their objections to the Penn Central offer, which became the subject of voluminous litigation and are discussed infra, under "Hearings on the Sale of the New Haven to Penn Central".

From the difficulty McAfee and counsel for Chase Manhattan had experienced in obtaining information from the Railroad Trustees concerning the Penn Central offer, they concluded that the indenture trustees were not being sufficiently consulted as to the important decisions that would have to be made about the Railroad's future. Therefore, they decided to request that the indenture trustees be kept more fully informed by the Railroad Trustees and on April 27 discussed the matter with Professor Moore and

Mr. Blanchette at the Fifth Avenue Branch of Manufacturers Hanover.

On June 16, McAfee, McKean and counsel for the other parties including Messrs. Moore, Blanchette and Mr. Joseph G. Auerbach, the Railroad Trustees' Special Counsel, met with Judge Anderson in his chambers to request that certain information be furnished to the representatives of the Bondholders and certain studies be made in connection with the evaluation of the Penn Central offer by the Court and the I.C.C. and as to the procedure to be followed. The various parties (other than the Railroad Trustees) also concluded that it would be in their best interests to have two appraisers make an independent valuation against which the offer of Penn Central might be judged. While no immediate action was taken in this regard, by late 1966 Wyer, Dick & Co., who had been consulted as to this possibility on several occasions during 1965, were retained, with the permission of the Reorganization Court, to study possible operation of the New Haven as a freight-only Railroad. Their report was ultimately put in evidence at the I.C.C. Inclusion Hearings in opposition to certain studies undertaken by the Railroad Trustees. This matter, as well as the question of the general position of the Corporate Trustee with respect to the Penn Central offer, necessitated frequent trips to New Haven by McAfee and McKean to confer with Moore and Blanchette, as well as counsel for the various other interested parties, and to attend hearings before Judge Anderson. These hearings also involved the continuing efforts of the Railroad to find a solution to the commuter service problem both in New York and in Boston.

On July 30, 1965, the Reorganization Court approved a new agreement insuring continued "East End" - i.e., Boston - commuter service at a hearing attended by McAfee. Though new proposals for the "West End" - or New York - service involving sale and leaseback of cars to the Port Authority together with federal and state subsidy programs were being discussed, the problems created by the voiding of the earlier New Haven-Port Authority lease and resultant loss of tax credits continued. McAfee reviewed the papers and drafted court orders for the new proposed arrangement and reported on his conclusions to officers of Manufacturers Hanover. While James W. Collier, another associate of ST&B, began the basic research on the questions of priority of the claims of six-month creditors (hereinafter discussed), McAfee and McKean continued to analyze the Penn Central offer and confer with Moore and Blanchette as well as keeping Manufacturers Hanover up to date on developments, such as the proposed sale of Boston's South Station by the Railroad Trustees. In the interest of keeping the Corporate Trustee and the Bondholders as completely informed as possible, another associate of ST&B, J. C. Moore, was assigned to review all correspondence, petitions and court orders in the first 4-1/2 years of the reorganization proceedings. He also began an analysis of §5(2) of the Interstate Commerce Act, which eventually became one of the key elements in the Inclusion Hearings hereafter discussed.

During November and December 1965, McAfee, with the assistance of his associate Moore, studied the progress of the I.C.C. hearings in the Penn Central merger with

regard to their possible effect on any eventual inclusion of the New Haven in the merger. Of special concern to McAfee was Wyer's advice that the so-called "Finch Study" prepared by Finch and others of the New Haven staff would show a deficit operation of the Railroad even on a freight-only basis. McAfee consulted with Keuthen and counsel for the other indenture trustees to formulate a position to counteract any possible ill-effect of the Finch Study on the inclusion of the New Haven in the merged Penn Central operations and expressed his concern and the concern of others about the Finch Study in an extended telephone conversation with Auerbach. He and counsel for Chase Manhattan also expressed this concern to Professor Moore at a meeting in New Haven following the hearing on the six-month claims. A few days later McAfee flew to Washington for a conference with I.C.C. Commissioner Tucker and Trial Examiner Welsh to get their approval to introduce Wyer's proposed report on the New Haven as a "freight-only" railroad in opposition to the Finch Study. McAfee then proposed to Auerbach that a joint freight-only study be made and introduced before the I.C.C. but this proposal was rejected by Auerbach after talking to Trustee Smith.

On December 1, McAfee attended the opening session of the I.C.C. hearings in Washington on the discontinuance of passenger service by the New Haven, and made a brief oral argument in favor of introducing Wyer's Study. On December 3, the Railroad Trustees introduced Finch's testimony and study. Consideration of the problem of the freight-only studies continued during January 1966, and on January 18, McAfee

requested time at the oral argument of the passenger service discontinuance hearings before the I.C.C. to present the position of the Corporate Trustee. On January 30, 1966, McAfee began to prepare to cross-examine Finch as to his findings. On February 7, 1966, McAfee went to Washington and attended and participated in the argument before I.C.C. Hearing Examiner Welsh in the passenger train discontinuance case.

At that point (February 11) it became necessary to ask Judge Anderson to extend the scope of his previous order authorizing the Wyer Study, since the area to be covered had expanded greatly due primarily to the testimony of Finch before the I.C.C. After discussing the problems with Wyer and certain officers of the indenture trustees McAfee, McKean and other counsel concluded that it would be necessary to do a "savings" and a "traffic" study of the New Haven, as well as the originally contemplated freight-only study. A conference of the various parties with regard to the studies to be made was held on the morning of March 8 and in chambers with Judge Anderson in the afternoon.

On April 27, 1966, McAfee was informed by Carney of the decision of the I.C.C. to continue the New Haven's passenger service on a long-haul basis, and of its simultaneous approval of the Penn Central merger. Carney obtained copies of the decisions. Over the next few days, these decisions were reviewed in detail by Albert X. Bader, Jr., another associate of ST&B who has since become a partner, and McAfee, who then discussed the position to be taken by the Corporate Trustee with its officers and counsel for the other parties.

Meanwhile, Bader had begun consultations with McAfee as to the presentation of Manufacturers Hanover's case

at the forthcoming hearings on the Railroad Trustees' contract with Pennsylvania and Central dated April 21, 1966, for the sale of the New Haven assets. Bader's study and analysis of this contract continued throughout the spring of 1966 and was summarized in a memorandum for McAfee as to the course that should be pursued by the Corporate Trustee and other representatives of Bondholders both in the light of the proposed contract and the two decisions of the I.C.C.

Early in May of 1966, McAfee requested James P. Murtagh, one of the tax partners of ST&B, to consider and discuss with him and officers of Manufacturers Hanover the tax benefits which might result to Penn Central if a merger could be effected and, particularly, if the tax losses of the New Haven could be carried over to Penn Central which at that time was expected to be a profitable operation. Also, at this time the effect of the I.C.C.'s decision in the train abandonment case was considered in the light of the Bondholders' future plans. On May 9, a conference was held at the midtown office of ST&B with Wyer and one of his associates, counsel for Chase Manhattan and the Committee and McAfee and Bader to consider the necessity of any further studies by Mr. Wyer.

On May 18, 1966, McAfee and Bader attended a meeting at the ST&B midtown office with representatives of Chase Manhattan, U.S. Trust, Oscar Gruss, who represented the largest single block of New Haven First Mortgage bonds and the Committee, as well as representatives of Wyer, Dick to discuss the proposed studies to be made by Wyer. A further meeting at the same office was held on May 24th among Bader and McAfee and counsel for the Railroad Trustees, Chase Manhattan, U.S. Trust and the Committee to discuss the contract of sale of the New Haven assets to Penn Central and related matters.

On June 1, 1966, McAfee attended a press conference in New Haven at which the New Haven Trustees announced that

Penn Central would take the New Haven assets under the contract as written, despite the obligation imposed on the New Haven by the I.C. C. to continue the passenger service.

On June 21, 1966, McAfee and Bader attended a meeting at the offices of Manufacturers Hanover with various officers of the Bank, as well as Wyer and counsel for Chase Manhattan, regarding the details of a study to be made by Wyer and associates in supplementing the "freight-only" study and making the "savings" study and also as to the "liquidation study" being made by the Railroad Trustees. These matters had been the subject of a meeting at the Bank the preceding day attended by McAfee and Bader and several Bank officers. On June 23, 1966, McAfee met with counsel for Chase Manhattan at the ST&B midtown office to discuss the studies being made by Wyer and his associates and related matters and also with respect to the pending petition and order relating to Providence Warehouse Co. On June 24, 1966, McAfee met at his office with counsel for Gruss and counsel for the Committee regarding the suggestion of Gruss that the lien of the mortgage not be released on sale to Penn Central and that we move before the I.C.C. to have the New Haven included at the time of the Penn Central merger. Later McAfee discussed these matters at a meeting with counsel for Chase Manhattan.

On July 8, 1966, Moore and Blanchette and several representatives of the Railroad met at the ST&B 350 Park Avenue office with McAfee and with counsel for Chase Manhattan, the Committee and U.S. Trust to discuss, among other things, the procedure to be followed with respect to hearings on the proposed sale of the New Haven assets to Penn Central and the liquidation study being made by the Railroad Trustees. On July 18, McAfee discussed these matters with Moore and Blanchette in New Haven following a hearing before Judge Anderson on the six months claims. On July 25th, McAfee attended a meeting at the offices of Manufacturers Hanover with officers of the Bank, Gruss and his

associate and his counsel regarding the inclusion of the New Haven in Penn Central at the time of the merger, as well as the liquidation value of the assets to be sold and the possibility of direct negotiation with Penn Central.

On September 8, 1966, McAfee met at the office of Manufacturers Hanover with officers of the Bank and with Gruss and his counsel regarding the suggestion of Gruss that the Bondholder representatives go to Penn Central directly and suggest that they increase their offer. On September 27, 1966, McAfee and Bader attended a meeting at Manufacturers Hanover with various Bank officers, as well at attorneys for Chase Manhattan, U.S. Trust, the Committee and Gruss, as to the Trustees' application proposing a two-step plan of reorganization and, particularly, the position of Chase Manhattan and others which was in opposition to the two-step plan.

On October 3, 1966, McAfee attended a meeting at the offices of Manufacturers Hanover with officers of the Bank and with two officers of Metropolitan Life Insurance Company, one of the largest holders of Bonds ("Metropolitan Life"), to discuss certain problems relating to the proposed two-step plan of reorganization and on the same day discussed some of these problems on the telephone with counsel for the Railroad Trustees, Chase Manhattan, U.S. Trust and Gruss. On October 4, McAfee and Bader met again with officers of the Bank to discuss the position of Manufacturers Hanover with respect to the Railroad Trustees' petition for Order No. 404, which contained the Railroad Trustees' request for authorization to file with the I.C.C. a plan of reorganization whereby the inclusion of substantially all the properties of the New Haven in the Penn Central would be effected by the sale of such properties. On October 5, McAfee and Bader attended a further meeting at the offices of Manufacturers Hanover with Bank officers, Gruss and his counsel and members of the Committee and their counsel to discuss the

objections of the Committee to a two-step plan of reorganization. Shortly after this meeting McAfee and Bader completed the revision of the answer of Manufacturers Hanover to the Railroad Trustees' petition for order No. 404, which supported the two-step plan as Manufacturers Hanover has done from the beginning. A copy of the proposed answer was sent to counsel for the Railroad Trustees, Metropolitan Life Insurance Company, the Committee and Gruss for their information.

On October 10, Bader attended a hearing before Judge Anderson in New Haven on the Railroad Trustees' petition for order No. 404 and at the hearing stated the position of Manufacturers Hanover. This position was that while Section 77 may not contemplate a situation such as that facing the New Haven it would seem appropriate and necessary that a two-step plan of reorganization be used in such a case to avoid delay in transferring the assets (and cutting off the losses.) Such a plan would provide first for the fixing of the consideration to be paid by Penn Central for the New Haven assets. Thereafter, the plan could deal with the treatment of the consideration as between the various classes of creditors. As indicated above Manufacturers Hanover had from the outset supported a two-step plan of reorganization whereas such a plan was opposed by Chase Manhattan, the Committee and Gruss, who later took an appeal from Judge Anderson's order to the U.S. Court of Appeals for the Second Circuit. On May 29, 1967, that court handed down its decision which held that it was premature to pass upon the objections to the two-step plan although it could be filed with the Commission as a suggestion but that the order of the Reorganization Court should not have included any determination of the validity of the plan. (378 F. 2d 635).

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On October 31, 1966, McAfee and Bader attended a meeting at the offices of counsel for Chase Manhattan with such counsel and an officer of Chase Manhattan, officers of Manufacturers Hanover and Wyer regarding the status of Wyer's "freight-only" study and "savings" study and related matters. On November 7, McAfee and Bader met with counsel for Chase Manhattan to further discuss the same subjects.

On November 10, 1966, McAfee and Bader attended a meeting at the offices of Manufacturers Hanover with officers of the Bank, counsel for Chase Manhattan, Gruss, his associate and his counsel, and counsel for the Committee with regard to the inclusion proceedings before the I.C.C. and the request by Gruss and the Committee that we join in their appeal to a three judge Federal court from the denial by the I.C.C. of Gruss' application for the simultaneous inclusion of the New Haven in the Penn Central merger. Manufacturers Hanover had also been requested to appeal from Judge Anderson's Order No. 404 and that matter was discussed at the meeting, but Manufacturers Hanover refused to appeal.

On November 15, McAfee and Bader attended a hearing before a three judge statutory court on the appeal by Gruss and the Committee from the refusal of the I.C.C. to include the New Haven at the time of the Penn Central merger. After the argument they attended a meeting at Manufacturers Hanover with officers of the Bank, counsel for the Railroad Trustees and Chase Manhattan, Gruss and his counsel, members of the Committee and their counsel, and counsel for U.S. Trust on the procedure to be followed before the I.C.C. and related

matters. Shortly after this meeting, Bader began the preparation of a petition to intervene before the I.C.C. in the hearing on the "inclusion" of the New Haven in the Penn Central merger and also the preparation of a letter to the Bondholders to bring them up to date on the status of the inclusion proceedings and other pending matters.

On November 30, McAfee and Bader received and studied the opinion of the three judge court denying the appeal of Gruss and the Committee and on the same day attended a meeting at Metropolitan Life Insurance Company with three of its officers as to the two-step plan and the procedure before the I.C.C. McAfee also discussed this at length over the telephone with Professor Moore in New Haven.

On December 5, 1966, McAfee and Bader attended a meeting at the offices of Manufacturers Hanover with various Bank officers, Gruss and his counsel and counsel for the Committee to discuss the propriety and advisability of seeking a meeting with representatives of New York Central and Pennsylvania and also to discuss the expected procedure at the pre-hearing conference before the I.C.C. on December 19. On December 13, McAfee and Bader met with counsel for Chase Manhattan at their office to discuss Wyer's "freight-only" study and discussed with Wyer at length over the telephone certain aspects of his studies.

On December 19, McAfee and Bader, with one of the officers of Manufacturers Hanover, attended a pre-hearing conference before the I.C.C. in Washington at which time the I.C.C. examiner (Examiner Present) ordered the hearings to begin in New York on January 16, 1967. (These hearings are hereinafter referred to as the "Inclusion Hearings" and are described in a separate part of this statement.)

During the years 1967 through 1970 most of the efforts of ST&B as counsel for Manufacturers Hanover were directed to the many days of hearings before the I.C.C. and arguments in the courts and the related preparation of testimony and briefs in connection with the Inclusion Hearings described below. However, many problems arose in connection with the continued operation of the New Haven and this required many meetings with counsel and Bank officers and the attendance at various hearings and conferences before Judge Anderson in New Haven and New York. One of the problems was how to continue to operate the railroad in view of the delay in the Penn Central merger. This resulted in a conference on April 21 at the office of Manufacturers Hanover attended by McAfee and Bader at which were present officers of the Bank, officers of Chase Manhattan and its counsel, counsel for the Committee and U.S. Trust and also Gruss and his associate and their counsel.

On May 1, 1967 McAfee and Bader attended a hearing before Judge Anderson on the petition of the Railroad Trustees for instructions as to the continuance of the New Haven in view of the delay occasioned by the Supreme Court decision delaying the Penn Central merger and on May 2 they attended at the argument in the Second Circuit Court of Appeals upon the appeal of Chase Manhattan, the Committee and Gruss from Order No. 404 approving a two-step plan of reorganization. Following the argument, they met with counsel for the Committee to discuss the Committee's motion to dismiss the reorganization proceedings.

On June 6 McAfee and Bader met with counsel for the Railroad Trustees, the Committee and Chase Manhattan at the ST&B midtown office to request the Railroad Trustees to file a full

and detailed plan of reorganization and to discuss the matters which would come before Judge Anderson on June 19. These problems had been discussed by counsel for the Bondholder interests at the same office on June 5 and were further discussed on June 12 by McAfee and Bader with counsel for Chase Manhattan and the Committee at the office of the latter. On June 19 McAfee and Bader attended a hearing before Judge Anderson on certain subsidy contracts and as to the Railroad Trustees' request for instructions as to the continued operation of the railroad, as well as the Committee's motion to terminate the reorganization proceedings. These matters were discussed again by McAfee and Bader with counsel for the Committee, Chase Manhattan and Gruss at a meeting on June 27 and on the same day they attended a meeting with Judge Anderson in his chambers in New York City with the above counsel as well as counsel for the Railroad Trustees and U.S. Trust. On the following day McAfee attended at the argument before the Second Circuit Court of Appeals at which time the Norfolk & Western Railroad sought to delay the Penn Central merger.

On July 6 McAfee and Bader met in the evening at the ST&B midtown office with counsel for the Railroad Trustees, Chase Manhattan, the Committee and Gruss to discuss the terms of a proposed lease of the New Haven and on July 8 McAfee and Bader drafted an outline of such lease to be submitted to the I.C.C. This outline was sent out that day to all counsel. It is more specifically discussed infra in "the Inclusion Hearings" section.

Early in September McAfee considered the petition of the Railroad Trustees for authority to retain as free cash the sum of $925,750.43 to be received from Boston Terminal Corporation as well as other petitions returnable before Judge Anderson on September 19.

On September 27 McAfee met with representatives of Metropolitan Life to discuss various matters relating to the reorganization, including, particularly, the proposed lease of the New Haven which was to be argued before the I.C.C. on October 2. On December 19 McAfee and Bader attended a hearing before Judge Anderson on petitions of the Railroad Trustees (i) to issue $25,000,000 of Trustees Certificates, (ii) to amend the agreement with the United States, (iii) to withdraw $1,708,246 from the Registry of the Court, (iv) to enter into operating agreements and also in connection with the motion to dismiss the proceedings, etc. On December 21, 1967 various matters were discussed at a meeting at Manufacturers Hanover at which officers of the Bank and representatives of Metropolitan Life were present, as well as McAfee and Bader.

On January 2, 1968, McAfee and Bader discussed with counsel for Chase Manhattan the possibility of negotiating with Penn Central for an increase in the price to be paid for the New Haven assets, a matter which had been discussed the same day and on other occasions with other counsel. On the same day McAfee telephoned Mr. Windsor Cousins, general counsel for Pennsylvania Railroad Company, to arrange a meeting. The following day, McAfee met with Cousins in Philadelphia and discussed at length the possibility of settling the contemplated action of Manufacturers Hanover and others to restrain enforcement of the I.C.C. order approving the contract to sell the New Haven assets to Penn Central. This conference was reported by McAfee to counsel for the Railroad Trustees as well as his plan to discuss with the various State representatives the attempt to settle with Penn Central. A few days later this plan was discussed by McAfee

with representatives of Connecticut, Massachusetts and New York and also with Mr. Ulrich Schweitzer, the principal attorney for the New York Central in New York City. These developments were discussed by McAfee with Cousins in a telephone conversation on January 15 and on January 19 with counsel for the representatives of Bondholders at the ST&B midtown office. At this latter meeting counsel present discussed the application of the Railroad Trustees to issue not exceeding $25,000,000 additional principal amount of trustees certificates. At a hearing before the three judge Court on January 30 McAfee informed the court of his discussion with Cousins and Schweitzer as the initial steps in an attempt to initiate settlement discussions with Penn Central.

On January 31, McAfee met with a representative of Metropolitan Life to discuss the legal problems involved in a possible settlement with Penn Central and on February 7 attended a further meeting at Metropolitan Life on the same subject with officers of that company, officers of Manufacturers Hanover, and Bader. On February 1 McAfee attended a hearing before Judge Anderson on the application of the Committee to bring a separate action with respect to the Grand Central Terminal properties and on the motion of Gruss for instructions.

On February 15 at the midtown office of ST&B, McAfee and Bader met with counsel for the Railroad Trustees, Chase Manhattan, the Committee, Gruss and U.S. Trust, at which time Auerbach reported on his conference with an unnamed representative of Penn Central regarding possible settlement and related matters. After the meeting McAfee telephoned Cousins in Philadelphia who suggested that a letter be written to Mr. Saunders, Chairman of Pennsylvania Railroad Company,

requesting a meeting. This suggestion was followed by McAfee sending a telegram to Saunders. On the following day, McAfee received a telephone call from Saunders authorizing him to arrange a meeting to discuss settlement. McAfee then arranged with interested counsel a meeting for February 20 and on that day the first meeting was held (in New York City) with Messrs. Saunders, Perlman, Bevan, Grant, Gerstnecker, Cousins and Schweitzer representing Penn Central. In addition to McAfee and Bader, Messrs. Midgal and Pollack were present to represent the Committee. McAfee informed counsel for the Railroad Trustees of the meeting.

On the following day an informal conference was held with Judge Anderson in New York City regarding the hearings on the plan of reorganization at which there were present counsel for the Railroad Trustees, the Committee, Chase Manhattan, U.S. Trust and Penn Central, as well as McAfee and Bader. Later McAfee and Bader met with counsel for the Committee at the ST&B office to consider the matters to come up at the next meeting with Messrs. Saunders and Perlman. On February 26, McAfee met at the ST&B midtown office with Moore and counsel for the Committee to discuss the possible methods of settling the controversy with Penn Central, such as amending the purchase agreement to provide for retention of assets, assumption of liabilities, etc. A further meeting on the subject of settlement was held on February 28 at the office of counsel for Gruss at which Gruss, counsel for the Committee, McAfee and Bader were present.

On February 29 a second settlement conference was held in New York with Messrs. Saunders and Perlman and their associates, at which time McAfee and Bader, as well as counsel for the Committee and counsel for Gruss, were present.

A further meeting was held at the ST&B midtown office on March 7 at which time McAfee and Bader were present with counsel for the Committee and counsel for Gruss to discuss the terms of a possible settlement which might be offered to Saunders and Perlman and their associates at the meeting to be held on March 11. The meeting was held as scheduled on March 11 and as usual McAfee and Bader and counsel for the Committee and for Gruss were present. A further meeting with Metropolitan Life was held on March 21 at which time McAfee reported that negotiations with Penn Central were continuing and related matters were discussed. The settlement negotiations were the subject of a further conference at the ST&B midtown office on March 27 attended by McAfee and Bader, and counsel for the Committee, Chase Manhattan, Gruss and U.S. Trust.

On April 3 a further meeting was held with Saunders, Perlman, Bevan, Grant, Cousins, and Schweitzer attended by McAfee and Bader and counsel for the Committee and Gruss, which conference had been preceded by a meeting of the Bondholder representatives at the ST&B midtown office. At the conference with Saunders and others a further offer of settlement was proposed by the Bondholder representatives but the new proposal was also unacceptable to Penn Central and it was agreed by those present that it would serve no useful purpose to continue the negotiations. Consequently, the negotiations were terminated.

On May 29, at the first hearing on the plan of reorganization before Judge Anderson, McAfee appeared for Manufacturers Hanover. On May 16 he attended a hearing before Judge Anderson on the application of the Railroad Trustees to

approve a voting trust for the stock of Railway Express Agency. After the hearing he discussed with Moore the possibility of reopening the settlement negotiations with Penn Central. On May 27 at the midtown office of ST&B a meeting was held with Railroad Trustees Smith and Kirk, as well as Moore, Auerbach, Blanchette, Orner and also members of the Committee and their counsel, counsel for Chase Manhattan, U.S. Trust and Gruss, and McAfee and Bader. The Railroad Trustees reported that the New Haven would run out of money early in 1969 and the implications of that situation were discussed at length. After the meeting the representatives of the Bondholders continued to discuss the many problems facing the New Haven, including, particularly, the possibility of a settlement with Penn Central despite the termination of negotiations on April 3.

At a meeting at Metropolitan Life on May 29, McAfee reported to several of their representatives the status of the negotiations with Penn Central and the reorganization proceedings. Prior to the meeting McAfee had discussed a number of the current problems in a long telephone conversation with Professor Moore. In the late afternoon on June 20, at a meeting at the midtown office of ST&B, McAfee and Bader met with counsel for the Committee, Chase Manhattan, Gruss and also counsel for the Railroad Trustees to discuss, among other things, the possibilities of reopening the negotiations with Penn Central. Counsel for the Bondholders had met earlier at the same office to discuss pending matters, including the report of Judge Van Voorhis, Special Master, on the ownership of the Grand Central Terminal Properties.

On August 22 a further meeting was held with Saunders, Perlman, Grant, Cousins and Schweitzer to discuss possible settlement at which meeting McAfee and Bader and counsel for the Committee and Gruss were present. The settlement meeting had been preceded by a breakfast meeting of counsel for the Bondholders.

On August 29, McAfee and Bader met at the ST&B midtown office to discuss with counsel for the Committee, Gruss, Chase Manhattan and U.S. Trust a proposal to sever the inclusion matter from the valuation proceeding and to hear the problems relating to inclusion before continuing with the valuation proceeding. In September, counsel for the Committee had arranged with Schweitzer for a meeting with Saunders, Perlman and associates on October 2 to further consider a possible settlement and on September 24 Schweitzer telephoned McAfee to ask if the meeting could be set for 11 o'clock and if counsel could join Saunders for lunch. On September 27 McAfee received a call from Midgal, counsel for the Committee, to say that Schweitzer had just called to say that Saunders saw no useful purpose in making a counter offer and the meeting with him on October 2 was cancelled. This was further discussed in a telphone conversation McAfee had that day with Schweitzer.

At a meeting at Metropolitan Life on October 2, McAfee reported to several Metropolitan Life representatives on the status of the I.C.C. proceedings and on the termination of settlement negotiations with Penn Central. On October 16, 1968, McAfee attended a hearing before Judge Anderson on the application of the Railroad Trustees for a loan of $4,000,000.

Early in January 1969, McAfee and Bader met with counsel for Gruss, counsel for the Committee and a member of the Committee, regarding the possibility of reviving the settlement negotations with Penn Central and the possibility of devising some method to take advantage of the New Haven tax losses which could be carried forward. On January 27, McAfee considered the objections of Irving Trust Company to the treatment of $12,500,000 Trustees Certificates in the proposed Plan of Reorganization and discussed the problem with Moore on the telephone. On the following day, he met with representatives of Metropolitan Life to report on the status of the reorganization proceedings and to obtain their views.

On March 17, McAfee gave further consideration to the possibility of amending the plan of reorganization to provide for the merger of the New Haven with a profitable company and discussed the matter with counsel for a bondholder representative. This matter was further considered on March 18 by McAfee with Johnston and with L. M. Rapp, the senior tax partner of ST&B.

On April 18, McAfee studied the Penn Central annual report and proxy statement and considered what the Bondholders' position should be as to the voting by Trustee Smith on the proposal to establish a railroad holding company. A few days later this matter was discussed by McAfee with counsel for Gruss at the latter's office. At this time McAfee was informed that Schweitzer sua sponte had suggested a meeting on May 27 with Saunders

and Perlman and on May 1 McAfee telephoned Schweitzer to ask if counsel for the Bondholders were expected to make an offer at the meeting on the 27th (his answer was in the negative) and if the meeting was to be held even if one of the two courts had not handed down a decision in the valuation case (his answer was in the affirmative).

On May 26 McAfee and Bader attended a meeting at the ST&B midtown office with counsel for the Committee, Gruss and Chase Manhattan to discuss the possibility of working out some settlement with the Penn Central at the meeting scheduled for the following day. On May 27 McAfee and Bader met at 230 Park Avenue with Saunders, Gerstnecker, Schweitzer and Perkins and with counsel for the Committee and Gruss, at which meeting Saunders stated that he could not make an offer and we stated that we would not make one.

Early in June, McAfee and Bader considered the problems faced by the Railroad Trustees in connection with the real estate taxes in Connecticut and Massachusetts. On July 2 McAfee attended a meeting at Metropolitan Life with certain of its representatives to report to them on recent developments. In September the question arose as to the possibility of compromising certain payments on three leased tug boats and the following month consideration was given to an action brought by representatives of New Haven employees relating to the group life insurance plan. This action was also one of the subjects of a meeting at the ST&B midtown office on October 24 with counsel for the Committee and counsel for Chase Manhattan. Later in the year McAfee and Bader devoted considerable time to the proposal of the Railroad Trustees to settle the substantial tax claims of the City of

Boston and this matter was discussed at length at a meeting on December 2, 1969 at the midtown office of ST&B with counsel for the Railroad Trustees, Chase Manhattan and the Committee at which meeting McAfee and Bader were present. About this time Bader began the preparation of a letter to the First Mortgage Bondholders to bring them up to date on the pending court proceedings and related matters.

Toward the end of January 1970 the I.C.C. handed down a decision in the group life insurance matter, which decision was reviewed by McAfee and discussed by him with Professor Moore. Early in April work was begun on a report to the Bondholders and early in May McAfee and Bader began a review of the Plan of Reorganization and of the amount of claims to determine the effect on the Plan of the cessation of dividends on the Penn Central stock. This review was followed by a meeting on June 18 at the office of Trustee Smith at which he was present with his counsel and others from the Railroad as well as counsel for the Committee and Chase Manhattan to discuss the facts disclosed at the recent annual meeting of the Penn Central and the effect on settlement of tax claims and per diem claims. In this connection other possible action was considered by Trustee Smith and those present but was deferred pending a proposed offering of $100,000,000 of debentures by Pennsylvania Company and the decision of the Supreme Court in the Inclusion Case. After the meeting McAfee and Bader discussed the problems with counsel for the Committee and with one of its members. These problems were later discussed with certain Bondholders who inquired as well as with counsel for Trustee Smith.

On June 21, 1970, Penn Central filed a petition for reorganization under Section 77 of the Bankruptcy Act.

On June 29 McAfee and Bader received and studied the decision of the U.S. Supreme Court in the Inclusion Case and considered the action which would have to be taken in the near future. On June 29 Bader attended a conference (originally called to assess the impact of the Penn Central reorganization) at the office of the Railroad Trustee with his counsel and counsel for the Committee and Chase Manhattan. Thereafter various aspects of the decision were discussed by McAfee and Bader with the other counsel involved.

On July 1 McAfee discussed with Professor Moore the wish of Manufacturers Hanover and Mr. Keuthen to resign as Trustees under the Indenture and the possibility that Judge Anderson might entertain an application toward that end since the decision of the Supreme Court had effectively settled many of the questions involved in the valuation controversy and a new series of hearings would now begin before the Reorganization Court and the I.C.C. On July 6 McAfee and Bader attended a meeting at the ST&B midtown office with counsel for the Committee and Chase Manhattan to consider the request of the Railroad Trustee to withdraw $584,110.85 of income earned during the period January 1, 1969 through June 30, 1970 on funds in the Registry of the Court and the effect of the lien claimed by Manufacturers Hanover as trustee on such funds under the Indenture. On July 8 McAfee attended a further meeting at the ST&B midtown office with counsel for the Railroad Trustee, Chase Manhattan and the Committee with respect to the withdrawal of such funds and also as to the desirability of the Railroad Trustee intervening in the Penn Central reorganization proceeding. On July 14 McAfee attended a hearing

before Judge Anderson on the application of Trustee Smith to withdraw the $584,110.85 of funds held in the Registry of the Court. Following the hearing McAfee met with Trustee Smith and his counsel as well as counsel for the Committee and Chase to discuss the New Haven's position in the Penn Central proceeding and related matters. At this time McAfee outlined to those present the conflict in the position of Manufacturers Hanover as a substantial creditor of Penn Central and as trustee under a number of Penn Central indentures. He also reported to those present that he had asked Professor Moore to discuss with Judge Anderson the possibility of Manufacturers Hanover resigning as trustee because of this conflict and that Professor Moore had done so.

At this time there was some discussion between McAfee and counsel for Manufacturers Hanover as trustee under another indenture as to certain rights and priorities under the 3-1/2% Gold Bond Mortgage of 1897 and the indenture was studied to ascertain the rights of the New Haven to a lien on one-half of the income of the Grand Central Terminal properties and related aspects of the matter.

In early September 1970 McAfee discussed both with Mr. Auerbach and Professor Moore in various telephone conversations the matter of the resignation of Manufacturers Hanover because of the conflicts in its position and the possibility of an individual being appointed as its successor and on September 21 McAfee discussed the matter informally with Judge Anderson. About this time further consideration was given by McAfee and Bader to the problems presented by the application of the Penn Central Trustees to affirm a Memorandum of Intent among the

Haven, Metropolitan Transportation Authority and Connecticut Transportation Authority with respect to a transfer of certain Penn Central's commuter operations, including the former West end New Haven Commuter operation and certain former New Haven assets to the State authorities. There was particular concern as to the amount of the consideration to be paid to the trustee under the Indenture securing $34,000,000 of Bonds held by the New Haven Trustee for release of its interest. These matters were further discussed by McAfee with counsel for the Committee and Chase Manhattan at the office of counsel for the Committee on September 24 and on the following day McAfee discussed with counsel for the Committee a proposal that the Penn Central trustees deposit with the trustee for the bonds held by the New Haven trustee certain funds it would receive under the lease, particularly $4,000,000 from the sale of passenger cars. On November 16 McAfee and Bader attended a meeting with Trustee Smith at his office with his counsel and counsel for the Committee and Chase Manhattan to discuss the effort of the Railroad Trustee to work out a settlement with the Penn Central Trustees in connection with the approximately $21,000,000 referred to above. This subject was further discussed with counsel for the Committee following a hearing before Judge Anderson on November 18 and thereafter by McAfee with Professor Moore on November 30.

On January 20, 1971 McAfee and Bader attended a meeting with Trustee Smith and his counsel and counsel for Chase Manhattan and the Committee as to the withdrawal of the New Haven Trustee's appeal from an order authorizing the Penn Central Trustees to issue $100,000,000 of trustees' certificates and the proposed agreement with said trustees as to the withdrawal of $9,000,000 from the account of Fidelity Bank and Trust Company as indenture trustee, which amount

would be used by the New Haven trustee. On February 2 at the office of Trustee Smith, McAfee attended a meeting with the Railroad Trustee and his counsel as well as counsel for the Committee and Chase Manhattan regarding a proposed settlement with the Penn Central Trustees as to certain matters relating to the B&P. This matter was the subject of a hearing before Judge Anderson on February 16 attended by Bader at which time the Railroad Trustee was authorized to proceed with the reorganization of the B&P.

On March 9 at the office of counsel for the Committee McAfee met with counsel for the Railroad Trustee and Chase Manhattan to discuss various matters involving the contract with Penn Central as well as the proposed arrangement by Penn Central with its Eurodollar creditors. These matters were the subject of a further meeting with the same counsel at the same place on March 23.

In June McAfee drafted the petition of Manufacturers Hanover and Keuthen to resign as trustees under the Indenture and also a proposed order of notice to be submitted to Judge Anderson. The matter of the resignation of Manufacturers Hanover and Keuthen was the subject of a conference on June 22 with Judge Anderson in his chambers in New Haven and on June 28 Judge Anderson signed an order as to the publication and mailing of a notice of hearing on the resignation petitions. The expected resignation of Manufacturers Hanover and Keuthen was the subject of a conversation with an officer of the New York Stock Exchange on July 27, since the Exchange was interested in the matter because the Bonds were listed on the Exchange.

On July 29 Bader and two officers of Manufacturers Hanover attended a hearing before Judge Anderson on the application of Manufacturers Hanover and Keuthen to resign. Judge Anderson granted the motion and signed an order (No. 650) appointing Lawrence Iannotti, Esq. as successor trustee. The order permitting the Corporate Trustee and the Individual Trustee to resign discharged said trustees from the trust created by the indenture, subject to the requirement that they file within 90 days from the date of the order an account of their proceedings since July 7, 1961. This account was promptly prepared by Manufacturers Hanover with the help of McAfee and Bader and duly filed with the Reorganization Court on October 27. On November 5, 1971 Judge Anderson signed an order giving notice of the hearing on the settlement of the account of the trustees on November 18, 1971 and on that day McAfee and Bader attended the hearing before Judge Anderson.

Following the filing by Manufacturers Hanover and Keuthen of their account, the Railroad Trustee by petition dated December 1, 1971 asked that Manufacturers Hanover turn over $96,578 in its hands to the Railroad Trustee and that Chase Manhattan, U.S. Trust and Morgan Guaranty Trust Company turn over other sums to the Railroad Trustee. After a hearing the petition was granted.

In November Professor Moore had informed Bader and McAfee that he would ask that approximately $548,000 held by Manufacturers Hanover be paid into the Registry of the Court.

This request was considered by McAfee and Bader in the light of the Indenture provisions which gave Manufacturers Hanover a lien on such funds for its compensation and expenses including its attorneys'fees. The matter was discussed at considerable length with officers of Manufacturers Hanover as well as with counsel for the Railroad Trustee. It was Manufacturers Hanover's position that it had a lien on the funds and that it was entitled to retain them subject to the lien until its compensation for services and expenses was finally determined and paid. Manufacturers Hanover also contended that it was not necessary to decide the lien question at this time and suggested that the funds be turned over to the successor trustee or to the Registry of the Court to be held in a separate account subject to such lien and any lien which might be asserted by others. A memorandum (19 pages) was submitted to the Court in support of this position. After a hearing Judge Anderson held that the funds should be deposited in the Registry of the Court.

On February 16, 1972 Bader attended a hearing before Judge Anderson on the settlement of the account of the Corporate Trustee and the Individual Trustee and on February 22 Judge Anderson signed an order approving the account.

Following the appointment of Mr. Iannotti as successor trustee Manufacturers Hanover turned over to him all necessary papers and cooperated with him in the beginning of his new duties. Since that time certain incidental

matters have arisen where it was necessary for ST&B to be involved but relatively little time has been required. Because of its interest as a substantial creditor both for money advanced and services performed by it and its counsel it has been necessary for the officers of Manufacturers Hanover and partners of ST&B to follow the principal developments in the reorganization proceedings.

Following the final settlement of its account in early 1972 Manufacturers Hanover and ST&B began the preparation of the applications for services and reimbursement of expenses of which this summary is a part.

Proceedings Involving Claims of Six-Months Creditors

On July 16, 1965, the Railroad Trustees filed a report concerning the claims of six-months creditors in which they stated to the Reorganization Court that the claims of six-months creditors were not entitled to priority. By its order dated July 16, 1965, the Reorganization Court fixed September 30, 1965 as the time for parties to file objections to the validity of claims both in amount and in right to preferential treatment. On September 29, 1965, Manufacturers Hanover filed objections, prepared by McAfee, to preferential treatment of six-months creditors' claims. By its order filed October 1, 1965, the Reorganization Court directed a hearing, held on November 26, 1965, as to whether any six-month claimant should receive preferential treatment. The Reorganization Court first considered the general question of whether any six-month claimants were entitled to priority and deferred the question of the amount and validity of particular six-month claims.

Strictly speaking, the claims of six-months creditors included claims of persons who had furnished materials, services or supplies to the New Haven within six months of the filing of New Haven's petition for reorganization (July 7, 1961). Such creditors claimed that they were entitled to preferential treatment by virtue of a rule

which had applied in equity reorganizations of railroads prior to the enactment of Section 77 of the Bankruptcy Act. This rule formulated three requirements for the preferential treatment of supply creditors:

(1) The supplies were furnished within the six-months period;

(2) the supplies were necessary to the railroad's operations; and

(3) there was a "current debt fund" within the meaning of the six-months rule out of which such creditors were entitled to be paid.

Other creditors of the New Haven whose claims were similar to the six-months claims also asserted a right to preferential treatment. Alco Products Corporation claimed a right to preferential treatment under the so-called "necessity-of-payment" rule. Various railroads asserted a right to preferential treatment of claims for per diem claims due them from the New Haven.

No exact determination of the amount and validity of particular claims was ever made, since such a determination was deferred by the Reorganization Court. Nevertheless, the six-months claims amounted to approximately $4 million, and the claims of railroads for per diem balances constituted an additional $2 million.

After preparing and filing objections to preferential treatment of six-months claims on September 29, 1965, counsel for Manufacturers Hanover engaged in substantial legal research as to the meaning and validity of the six-months rule. In September, 1965, this research project and

the writing of the brief which would follow from it were assigned to Collier. In the fall of 1965, Collier spent many days, aggregating well over a month of working time, in research and study on the six-months rule. The case law on the six-months rule is unusually complex, having been developed during the nineteenth century in equity reorganization proceedings. While counsel for Manufacturers Hanover always considered that a correct understanding of the rule left no basis for preferential treatment of the six-months claims asserted here, a precise formulation of the rule was often difficult, particularly in view of the need to apply the rule to modern accounting concepts. In addition, it was necessary to determine a precise manner for formulating the necessity-of-payment rule, so as to show that that rule was inapplicable in the New Haven reorganization, and to distinguish the necessity-of-payment rule from the six-months rule. During November and early December, 1965 Collier prepared a memorandum attacking the claimants asserted right to priority. McAfee spent substantial time reviewing and revising this memorandum. The memorandum (consisting of 10 pages) was filed in the Reorganization Court on or about December 8, 1965.

Following the service of Manufactures Hanover's main brief on the six-months claims, Collier and McAfee, in April, 1966, commenced work on a reply brief.

In early July, 1966, Collier and McAfee met with John McClare of S. D. Leidesdorf & Co. to review accounting questions relating to the six-months claims. On July 18, 1966, McAfee attended a further hearing on the subject before the Reorganization Court.

Following this hearing, Collier organized all exhibits and papers relating to the six-months claims. He then continued the preparation of an additional memorandum for the Court. Collier, McAfee and Joseph Schreiber, representing Chase Manhattan, met with McClare to discuss accounting problems which would be treated in the brief. Working together, McAfee and Collier completed a reply brief (of 38 pages) which was served and filed on or about September 16, 1966. In October, 1966, Collier prepared a second reply brief. After working with McAfee, he completed this brief (of 18 pages) which was served and filed on October 24, 1966. After completion of these briefs, Collier organized the voluminous materials relating to the six-months claims. There was no further work on the six-months claims until the decision of the Reorganization Court on August 28, 1967.

The Reorganization Court's decision accepted the view which Manufacturers Hanover, as well as the Railroad Trustees and other parties, had been urging. This position was that there was no "current debt fund" within the meaning of the six-months rule out of which six-months claimants could be entitled to preferential treatment. Just as Manufacturers Hanover and the other parties had done, the Reorganization Court explored in depth the meaning of the six-months rule and its application to accounts kept in accordance with the I.C.C. accounting rules and modern accounting principles. The Court also delved into the rationale for the rule and the distinction between the rule and the "necessity-of-payment" rule.

Timely appeal was taken to the Second Circuit Court of Appeals from the Reorganization Court's decision by the majority, but not all, of the six months claimants. In addition, appeals were taken by per diem claimants.

In November, 1967 John J. McGraw, another associate of ST&B, commenced a review of the Reorganization Court's decision in preparation for the then pending appeals. Through the spring of 1968, McGraw spent extensive time reviewing the cases defining the six-months rule and the distinction of that rule from the necessity-of-payment rule. In particular, he focused upon the public policy arguments which in the past had supported the rule and which conceivably could be used by the appellants to argue for an expansion of the rule.

In March and April, 1968, he prepared drafts of a brief opposing the brief of the six-months claimants. In May, 1968, McAfee, Bader and McGraw spent considerable time working out the final version of this brief (37 pages in length) which was filed on May 6, 1968. Following the preparation of this brief McGraw organized the papers and materials relating to the six-months claims appeal.

The argument on the appeal to the Second Circuit Court of Appeals was heard on September 18, 1968. In the week before this argument McAfee, Bader and McGraw spent extensive time reviewing the briefs and preparing for the argument. Bader argued the case before the Second Circuit Court of Appeals for Manufacturers Hanover.

On December 9, 1968, the Second Circuit Court of Appeals rendered its decision unanimously affirming the decision of the Reorganization Court. Following this decision the six-months claimants made an application for a writ of certiorari to the United States Supreme Court. Counsel for Manufacturers Hanover prepared a draft brief in opposition

to this petition. McGraw with the assistance of Bader and McAfee drafted this brief which was incorporated into the brief of the Railroad Trustees following a conference between counsel for the Railroad Trustees and Bader and McGraw in New Haven. Subsequently, McGraw prepared a short brief of adherence which was edited by McAfee and Bader. This brief was then filed in the Supreme Court on behalf of Manufacturers Hanover. The Supreme Court denied the six-months creditors' petition for a writ of certiorari. Subsequently, the Railroad Trustees and Manufacturers Hanover filed Bills of Costs in the Second Circuit Court of Appeals, and, following two motions, one relating to the late filing of such Bills of Costs and the other relating to the amount of such Bills of Costs, costs on appeal were granted to, and collected by, Manufacturers Hanover.

In summary, Manufacturers Hanover together with the Railroad Trustees (with, at the outset other bondholder representatives) were successful in every step of the proceedings involving the six-months creditors. By virtue of such success the New Haven estate was benefited by approximately $4 million on account of the six-months claims and an additional $2 million on account of the per diem claims. In the initial proceedings in the Reorganization Court, the claims were actively opposed not only by Manufacturers Hanover and the New Haven Trustees, but also by several other bondholder representatives. On the appeal to the Second Circuit Court of Appeals Manufacturers Hanover was the only Bondholder representative which submitted a full brief, although the New Haven estate was also represented by counsel for the Railroad Trustees.

Hearings on Sale of the New Haven to Penn Central ("Step I") (the "Inclusion Hearings")

In September 1966, the Railroad Trustees, Pennsylvania Railroad Company ("Pennsylvania") and New York Central Railroad Company ("Central") filed with I.C.C. a joint petition, submitting the Purchase Agreement dated April 26, 1966, among Pennsylvania Central and the Reorganization Trustees for the sale of the New Haven's assets to Penn Central as a first step in the Plan of Reorganization of the New Haven and as compliance with Condition 8 of the I.C.C.'s order, under Section 5(2) of the Interstate Commerce Act, approving the merger of Pennsylvania and Central.

The Commission ordered consolidated hearings under Section 77 of the Bankruptcy Act and Section 5(2) of the Interstate Commerce Act, and designated Hearing Examiner Arthur S. Present to hear the case on an expedited basis. At a pre-hearing conference in Washington, D.C. on December 19, 1966, Examiner Present fixed a schedule for circulation of the New Haven Trustees' evidence and ordered that the hearing commence in New York on January 16, 1967.

In January 1967, hearings (the "Inclusion Hearings") were commenced before Examiner Present on whether the Purchase Agreement should be approved under Section 5(2) of the Interstate Commerce Act and under Section 77 of the Bankruptcy Act as a partial plan of reorganization of the New Haven. Before the commencement of this hearing, it was the firm conviction of Manufacturers Hanover and its counsel that the consideration to be paid to the New Haven under the Purchase Agreement was grossly inadequate. Such a conslusion, however, could only be substantiated by a thorough testing of

the testimony of various valuation witnesses and through the conduct of studies by independent experts employed by Manufacturers Hanover and other bondholder representatives.

In late 1966, prior to the commencement of the hearings, McAfee and Bader participated in extensive meetings and discussions with other bondholder representatives. At this time, many of the issues in connection with the New Haven reorganization--and particularly with respect to the method of valuing the assets to be sold--were of course, less clear and less well-defined than those issues have become since the Inclusion Hearings. Actually, from the time the New Haven Trustees reached initial agreement with Pennsylvania and Central as to the terms of what became the so-called "Inclusion Agreement" until the eve of the argument in the Supreme Court on March 30, 1970, the New Haven Trustees and their counsel and counsel for the Bondholders, including Manufacturers Hanover, were in an adversary position as to many, and at times virtually all, aspects of the fairness of the Inclusion Agreement. The New Haven Trustees supported the Inclusion Agreement, as they had bound themselves to Penn Central to do, and sought to prove that it was fair and equitable, since of course, they were convinced that it was. Counsel for Manufacturers Hanover, as well as other representatives of the Bondholders (none of whom had been consulted in any respect as to the Inclusion Agreement), attacked the Agreement on the ground that the consideration to be paid was grossly inadequate and that the evidence of the New Haven Trustees (and that of the Pennsylvania and the Central) undervalued the assets being sold and over-valued the consideration

to be received. The position of the representatives of the Bondholders on both points was ultimately sustained by the Supreme Court. (The foregoing is not a criticism of the New Haven Trustees for binding themselves to support the Inclusion Agreement since that is not the subject of this writing but rather to indicate the difficulties under which Manufacturers Hanover and its counsel and other counsel for the Bondholders were operating, i.e. they not only had Penn Central as an opponent in contesting the terms of the Inclusion Agreement but the New Haven Trustees as well. Once inclusion was accomplished, i.e. beginning in 1969, the New Haven Trustee modified his position substantially).

While the New Haven Trustees undertook a study based upon liquidation value (ultimately the so-called "Gordon Study"), various bondholder representatives thought it necessary to explore valuation based upon the anticipated capitalized value, including going concern value, of the New Haven assuming it were operated as a freight-only railroad. Such a study was also deemed useful as providing the basis for determining the proper amount of subsidy which should be paid if passenger operations were continued. (It will be recalled that at this time, the New Haven interests were also being forced to come to grips with the I.C.C.'s decision requiring continued operation of long-haul passenger service, and the rather uncertain state of the various forms of subsidy being paid by the states. It will also be recalled that, with the permission of the Reorganization Court, Manufacturers Hanover and Chase Manhattan had retained Wyer, Dick & Co., a leading firm of railroad experts, to conduct a study as to whether the New Haven could operate as a freight-only railroad at a profit.)

In connection with the Wyer freight-only study, McAfee and Bader spent substantial time studying the issues presented and various drafts of the Wyer reports. In addition, they reviewed the areas in which additional testimony might be introduced in favor of bondholder positions, and they planned the positions which the bondholders should take in the Inclusion Hearings.

The Inclusion Hearings commenced on January 16, 1967, at the Biltmore Hotel in New York City. McAfee and Bader attended these hearings on a daily basis; these hearings ran a total of 35 days spread over a period of approximately five months. Francis E. Lake, Jr., an associate of ST&B, attended the early stages of the Inclusion Hearings.

During the hearings testimony in written form would be submitted to opposing counsel before the hearing sessions began. Bader and McAfee, as well as Lake, spent a substantial amount of time going over the prepared testimony (and work papers) of the Reorganization Trustees' witnesses and later of Penn-Central's witnesses to plan their cross-examination and to consider and plan the introduction of rebuttal evidence. Given this program of activity it would frequently happen that McAfee and Bader would attend hearings all day and work most of the night preparing for a cross-examination the following day.

During the hearings, there were two substantial recess periods--the first to permit Penn Central to prepare and circulate its direct evidence, and the other parties to review it, and the second to permit similar work on the direct case of the opponents. During these periods McAfee

and Bader (sometimes with the assistance of Lake) would consider what type of expert testimony they should introduce and would work with the independent experts in preparing the testimony which those experts would give. During this period Lake spent considerable time preparing digests of the testimony of most of the witnesses who appeared in the proceedings. He also did research on various issues in the case, including the question of the amount, if any, which the New Haven should receive for its "going concern value".

In February 1967, John J. McGraw, another associate of ST&B, was brought into the case to research the Commission's method of valuation of railroad properties in reorganization proceedings and the valuation of securities awarded during such proceedings. Because of the scarcity of indices to Commission decisions, McGraw went practically volume by volume through the most recent 30 years of Commission decisions searching for cases discussing valuation of railroad properties in a Section 77 Reorganization and of securities distributed in such a reorganization. McGraw also reviewed Court decisions dealing with previous reorganizations.

Upon the conclusion of the hearings on May 12, 1967, counsel for Manufacturers Hanover proceeded to prepare a main brief, dated June 5, 1967 (62 pages-printed), attacking the adequacy of the consideration provided in the Purchase Agreement. This brief examined in detail the standards for valuing the New Haven's property and attacked the adequacy of the valuation of the New Haven's properties contained in the testimony of witnesses for Penn Central and the New Haven Trustees. In particular, the brief argued that the New Haven

was entitled to a full one-half interest in the so-called Grand Central Terminal properties, and that the New Haven's real estate, including the Harlem River and Oak Point Yards, and the New Haven's other physical assets were worth considerably more than the valuation placed upon such properties by the New Haven Trustees. The brief also attacked the excessive valuation of the consideration being paid to the New Haven, including the valuation of 950,000 shares of Penn Central Stock at $87.50 per share. In addition, the brief argued that the New Haven should receive amounts in excess of liquidation value for its going concern value and for the tax advantages which Penn Central would obtain.

On June 15, 1967, McAfee, Bader and McGraw traveled to Washington, D.C., where the issues represented in the main brief were argued orally to the Commission. Bader argued the position of Manufacturers Hanover; McAfee and McGraw participated in the planning of this argument and consulted on the adjustments necessary to meet the oral argument of the Petitioners.

On July 17, 1967, Manufacturers Hanover submitted its reply brief (41 pages-printed). In connection with this brief McGraw, Bader and McAfee examined in detail various contracts and other documents relating to the Grand Central Terminal property, including the entire record of the so-called Biltmore case. McAfee, Bader and McGraw together spent considerable time developing this portion of Manufacturers Hanover's case in the reply brief. The reply brief dealt with most of the other issues in the case and responded to criticisms of the bondholders' positions by

Penn Central and the New Haven Trustees. In addition, the reply brief argued that Penn Central should take over all the New Haven's operations simultaneously with the consummation of the Penn Central merger. The reply brief also contained, as appendices (A) a copy of the Reorganization Court's Partial Ruling on Petition for Order No. 441, in which the Court suggested the immediate takeover of New Haven's pressing financial difficulties, and (B) a summary of proposed lease provisions which had been formulated after careful consideration by McAfee and Bader.

Hearing on Proposal for Lease of New Haven to Penn Central

On August 1, 1967, the Commission ordered that Pennsylvania and Central negotiate with the New Haven Trustees for the assumption of the operations of the New Haven simultaneously with the consummation of the Penn Central merger by lease or by other means. This order was prompted, we believe, by arguments of Manufacturers Hanover and other bondholder representatives that immediate inclusion by lease was essential and by the Partial Ruling on Petition for Order No. 441, in which the Reorganization Court expressed grave concern over whether the New Haven could survive until its inclusion in the Penn Central and suggested that the Commission should order the New Haven's inclusion in Penn Central as soon as the Penn Central merger took place. The Summary of Proposed Lease Provisions (referred to above), prepared by McAfee, Bader and various officers of Manufacturers Hanover, covered in outline form such items as the specific property to be leased and at what terms and

for what periods; retention of the New Haven's rights in the Grand Central Terminal Properties; assumption of obligations with respect to leased lines and affiliated companies; maintenance of franchises, licenses and permits; and those operating factors required to maintain a viable physical plant and a continuous employee structure. In short, Manufacturers Hanover attempted to implement the desire of the Reorganization Court, expressed in its Partial Ruling on Petition for Order No. 441, to include the New Haven in the merged Penn Central as soon as such merger took place and to resolve the remaining details after the potential collapse of the New Haven had been avoided. However, the New Haven Trustees and Pennsylvania and Central agreed (without any consultation with the Bondholder representatives) that a lease was not feasible, and Pennsylvania and Central, together, and the New Haven Trustees made alternate proposals for an interim $25 million loan to the New Haven from Penn Central leading to the Interim Relief Hearings discussed below.

The Commission held hearings (the "Interim Relief Hearings") on September 25, 26 and 27, 1967 in Washington, D.C., on the proposal for an interim lease of the New Haven or for an alternative loss-sharing formula. McAfee and Bader reviewed testimony which would be introduced at these hearings and attended each day of the hearings in person. In addition, McAfee and Bader appeared in Washington, D.C. before the Commission on October 2, 1967 for oral argument on the lease or loss-sharing question, and Bader argued the position of Manufacturers Hanover that Penn Central should take over all the New Haven's operating losses immediately by lease. During this period McGraw prepared a draft of a brief to the Commission setting forth Manufacturers

Hanover's position on a lease. McAfee and Bader worked with McGraw on revisions of this brief (24 pages-printed) which was filed with the Commission on October 12, 1967. The brief argued that from the time of the Penn Central merger, Penn Central should bear all of the New Haven's operating losses, that Penn Central should assume the New Haven's operations by lease immediately upon consummation of the Penn Central merger and that public authorities had not adequately met their obligations to support the New Haven's operations.

Proceedings in the United States District Court for the Southern District of New York to Review the Commission's November 16, 1967 Decision

By its decision and order dated November 16, 1967 (the "Second Supplemental Report"), the Commission approved the Purchase Agreement under Section 5 (2) of the Interstate Commerce Act and under Section 77 of the Bankruptcy Act, as a partial plan of reorganization of the New Haven. The Second Supplemental Report found that the New Haven's assets were worth approximately $125 million ("rounded-off" from $128,980,000) and that the consideration the New Haven would receive was also equal to $125 million. In so finding the Commission rejected almost all the arguments which various bondholder representatives had advanced, including arguments by Manufacturers Hanover relating to the value of the New Haven's real estate and other physical properties, the New Haven's going concern value, the tax benefits to Penn Central and the value of 950,000 shares of Penn Central common stock

and of other consideration credited to Penn Central. The Commission found only a nuisance value of $13 million for the New Haven's rights in the Grand Central Terminal properties (an increase over the $5 million value placed upon the properties by the Railroad Trustees) although Manufacturers Hanover had argued that the New Haven's interest was worth approximately $113 million. The November 16, 1967 decision in addition approved an arrangement by which, following consummation of the Penn Central merger, Penn Central would lend the New Haven up to $25 million over three years against Trustees' Certificates and Penn Central would bear part, but not all, of the New Haven's losses.

McAfee, Bader and McGraw carefully reviewed this decision. McAfee and Bader had several conferences with other bondholder representatives as to the steps which should be taken in light of the decision. McGraw did extensive legal research on the administrative law and constitutional law questions which would be involved in an attack upon the decision. McGraw also reviewed procedures for commencing an action before a three judge District Court to enjoin enforcement of the Commission's decision, at least insofar as the decision arose under Section 5 (2) of the Interstate Commerce Act.

During December, 1967 and January, 1968, McGraw and Bader drafted a complaint seeking the convening of a three judge District Court and an injunction against enforcement of the November 16, 1967 decision for the reasons that the consideration provided for in the Purchase

Agreement was grossly inadequate and that the loss-sharing provision adopted by the Commission was arbitrary and unlawful. The drafting of this complaint required a decision as to each point on which Manufacturers Hanover would challenge the Commission's decision, as well as a formulation of the grounds upon which each such point would be challenged. Bader and McAfee spent considerable time reviewing and revising the complaint.

In January, 1968, McGraw drafted an Order to Show Cause with a supporting Affidavit for the convening of a Three-Judge District Court and for a temporary injunction of a sale of the New Haven's assets to Penn Central. McAfee and Bader reviewed and revised this Order to Show Cause and Affidavit which together with the complaint was filed on or about January 23, 1968 in the United States District Court for the Southern District of New York. On January 30, 1968, after entry of an order convening a Three-Judge Court, McAfee and Bader attended a hearing on the Order to Show Cause at which the preliminary injunction was denied but a schedule was set for the filing of briefs on the merits and on the United States' motion to dismiss for want of jurisdiction.

Apart from filing a memorandum in opposition to the United States' motion, McAfee, Bader and McGraw spent most of their working time during February and early March, 1968 preparing Manufacturers Hanover's main brief to the Three-Judge District Court. Each wrote significant portions of the main brief and spent considerable time editing and

rewriting other portions of the brief. McGraw did a substantial amount of research on the scope of review and the constitutional right to fair compensation. McAfee spent considerable time working with the issues involving the Grand Central properties. Bader prepared the section of the brief dealing with the valuation of other specific assets and the valuation of the consideration. The brief, in addition to setting forth Manufacturers Hanover's position on the adequacy of consideration, also discussed the loss-sharing provisions which the Commission had established in its November 16, 1967 decision and argued that the provisions were unconstitutional since they were designed to coerce the bondholder representatives into relinquishing their right to challenge the decision in the courts. Near the end of this period, substantial time was spent in conferring with other counsel for the bondholder interests in order to coordinate the positions expressed and in proofreading the brief (124 pages-printed), which was filed on March 15, 1968.

In mid April 1968, counsel for Manufacturers Hanover were served with the answering briefs of Penn Central, the Commission and other parties (which totalled well over 300 printed pages). This left counsel with approximately two weeks in which to prepare a specific reply to the arguments made in the answering briefs. McAfee, Bader and McGraw spent almost all of this two-week period writing and revising Manufacturers Hanover's reply brief (49 pages-printed) which was filed in the Three-Judge District Court on May 1, 1968.

On May 6, 1968, McAfee, Bader and McGraw attended a full day of argument before the Three-Judge District Court. Bader, with counsel for other bondholder interests, argued the position of Manufacturers Hanover. McAfee and McGraw had participated in the preparation of the argument and the rebuttal.

Objections before the Reorganization Court to Approval of the Commission's November 16, 1967 Decision

Pursuant to an order of the Reorganization Court, counsel for Manufacturers Hanover prepared formal objections to the November 16, 1967 decision, insofar as the decision constituted a partial plan of reorganization of the New Haven. These objections were filed with the Reorganization Court on or about April 22, 1968. On April 29, 1968 McAfee attended a hearing in New Haven, Connecticut before the Reorganization Court on the objections and stated the position of Manufacturers Hanover.

At the direction of the Reorganization Court, hearings were held on May 2 and May 7 and 8, 1968 before Judge John Van Voorhis, (a Judge of the New York Court of Appeals until his retirement), sitting as Special Master, on the nature of the New Haven's rights in the Grand Central Terminal properties. McAfee and Bader attended the argument, and McAfee made the principal argument for Manufacturers Hanover. Subsequently, the Special Master rendered a decision as to the nature of the New Haven's rights, but did not place a value on the rights. This decision found that

the New Haven's interest in the Grand Central Terminal properties was equal to the capitalized value of one-half of the excess of the income from the properties over the cost of operating Grand Central Terminal. While this decision did not find the full value for which Manufacturers Hanover had argued, it constituted a substantial improvement from the "nuisance value" of $13 million found in the November 16, 1967 decision. McAfee, Bader and McGraw all spent considerable time preparing the arguments made before the Special Master, who had before him the briefs of the parties to the Three-Judge District Court.

At the direction of the Reorganization Court, the Special Master held further hearings from July 8 to July 13, 1968 on the value of the New Haven's interest. McAfee, Bader and McGraw attended daily at both sets of hearings before the Special Master. McAfee and Bader spent considerable time in connection with the hearings before the Special Master, planning the direct evidence they would introduce on behalf of Manufacturers Hanover and in interviewing expert witnesses in connection with the preparation of such testimony. At the July 1968 hearings, Bader, McAfee and McGraw spent considerable time preparing drafts of cross-examination which Bader used at the hearing and also in preparing for the oral argument which was heard on July 13, 1968. Following these hearings, the Special Master rendered a Supplemental Decision in which he discussed the evidentiary basis for finding the capitalized value of the excess income from the Grand Central Terminal properties but did not himself find such a value.

Following the hearing before the Special Master, McAfee and Bader prepared a supplemental brief (13 pages printed) to the Reorganization Court supporting certain of the findings of the Special Master but arguing that the Special Master had failed to recognize the full value of the New Haven's interest in the Grand Central Terminal properties. (Copies of all briefs submitted in the Three Judge District Court had already been submitted to the Reorganization Court). On July 24, 1968, an additional supplemental brief to the Reorganization Court (24 pages) was filed which discussed in detail the monetary value of the interest which the Special Master found the New Haven had in the Grand Central Terminal properties. McAfee and Bader spent considerable time preparing this brief, which explored in depth the valuation evidence which had been introduced in the hearings before the Special Master.

On July 26, 1968, McAfee and Bader attended the argument before the Reorganization Court of all points relating to the Purchase Agreement and the valuation of the New Haven's assets and the consideration to be given therefor. Bader argued the position of Manufacturers Hanover.

Hearings on Step Two of the Plan of Reorganization

As we have noted above, in response to the petition of the railroad's Trustees, the Reorganization Court handed down Order No. 404, dated October 24, 1966, authorizing the Trustees to file a plan of reorganization under §77(d) of the Bankruptcy Act with the Interstate Commerce Commission and to

proceed under §5(2)(d) of the Interstate Commerce Act to effect the inclusion of the New Haven into the (then-proposed) Penn Central. Order No. 404 upheld the concept of a two-step plan of reorganization and directed the New Haven's Trustees to proceed with the formulation of the second step in the reorganization plan. An appeal from the granting of Order No. 404, in which Manufacturers Hanover did not join, was taken to the Second Circuit Court of Appeals. In response to the decision of the Second Circuit modifying the Reorganization Court's Order No. 404 (378 F.2d 635) the New Haven Trustees filed on September 1, 1967, a second step to the reorganization plan which proposed forming a holding company to receive the consideration to be paid by the Penn Central for the New Haven's properties and to distribute debt and equity securities of such holding company to various of the classes of claimants against the New Haven estate.

On November 29 and 30, 1967, hearings (the "Step Two Hearings") were held before a Commission Hearing Examiner in the Biltmore Hotel in New York City on the term of the second step of the plan of reorganization of the New Haven. McAfee, Bader and McGraw attended both days of this hearing and Bader cross-examined Trustee Kirk extensively. Bader also moved successfully to strike, as irrelevant, the testimony of Trustee Smith. Prior to this hearing McAfee, Bader and McGraw reviewed the testimony prepared for introduction at the hearing and prepared cross-examination of the witnesses participating in the hearing.

At the request of various parties and in light of delays in the New Haven Reorganization resulting from the

review in two courts of the November 16, 1967 decision, the Commission delayed the filing of briefs on Step Two of the plan of reorganization until March 25, 1968 for the main brief and April 16, 1968 for the reply brief. In connection with the writing of these briefs, McGraw did considerable legal research on the absolute priority rule and the right of the First and Refunding Mortgage of the New Haven to be paid in stock of the holding company for both principal and interest. John L. Afton, an associate of ST&B, researched the right to priority of claims for post-bankruptcy interest on pre-bankruptcy tax claims and prepared a section of the main brief arguing that such claims were not entitled to preferential treatment. McGraw drafted most of the other points in the main brief (26 pages) and the reply brief (11 pages), and Bader and McAfee spent considerable time revising and editing drafts of the briefs.

1968 Review of the Commission's Second Supplemental Report and Order by the Three-Judge District Court and the Reorganization Court

In decisions rendered on July 10, 1968 and August 13, 1968 by the Three-Judge District Court and the Reorganization Court, respectively, the November 16, 1967 decision was disapproved because it failed to provide adequate compensation for the New Haven's assets. Both courts remanded the proceedings to the Commission for a further adjudication of the value of the New Haven assets and consideration which the New Haven should receive. In addition, the Three-Judge District Court directed the Commission to

reconsider its loss-sharing formula in view of the fact, criticized in the briefs of Manufacturers Hanover, that the formula had the effect of penalizing bondholder representatives for challenging the November 16, 1967 decision before the courts.

The Three-Judge District Court indicated that the New Haven should receive an additional $45 to $50 million from Penn Central. The court found that $16.2 million in real estate taxes had been incorrectly counted as both a cost of liquidation and as an element of consideration from Penn Central, that the New Haven was entitled to one-half the capitalized value of the excess income from the Grand Central Terminal properties, estimated by the court as at least $25 million, that the Commission improperly failed to discount the expenses, as well as the proceeds, of liquidation and that the Commission improperly "rounded-off" by approximately $5 million the difference between the value of the New Haven's assets and the value of consideration being paid by Penn Central. The court also directed the Commission to reconsider its valuation of the New Haven's Harlem River and Oak Point Yards and of the New Haven's interest in the Boston & Providence Railroad.

The Reorganization Court directed the Commission to order Penn Central to take over the New Haven no later than December 31, 1968 in order to put an end to the New Haven's operating deficits. The court stated that it would not authorize borrowings for operations of the New Haven after December 31, 1968 since such borrowings would work an

unconstitutional taking of the security of the New Haven's bondholders. The court agreed with most of the valuation findings of the Three-Judge District Court and indicated that, on remand, the Commission should find additional consideration of $33 to $55 million.

Manufacturers Hanover filed a notice of appeal from the Order of the Reorganization Court in order to preserve its rights with respect to questions adversely decided by the Court.

Hearings on Remand Before the Commission

Pursuant to the decisions of the Three-Judge District Court and the Reorganization Court, the Commission ordered that new hearings (the "Remand Hearings") be held on the remand from the two courts and set October 7, 1968 as the first day of such hearing. On September 10, 1968, McAfee and Bader attended a pre-hearing conference before a Commission Examiner in Washington, D.C. From the time of this conference until the commencement of the Remand Hearings, McAfee and Bader expended considerable time and effort in planning the evidence which Manufacturers Hanover would introduce and in assisting expert witnesses in the preparation of the statements which such experts would make. This required a careful study of the decisions of the Three-Judge District Court and of the Reorganization Court and an analysis of the figures which could be introduced to supplement the record complied before the Special Master. During this period, counsel for Manufacturers Hanover received the new evidence being submitted by Penn Central, and a substantial amount of time was expended

analyzing this evidence, planning the cross-examination of witnesses presenting such evidence and preparing rebuttal evidence.

The hearings on remand were held before Examiner Clerman in the Biltmore Hotel in New York City and lasted seven full days, commencing October 7, 1968. McAfee and Bader attended each day and McGraw attended two days. The evenings following hearing days were usually spent preparing cross-examinations for the following day and Bader was active in cross-examining witnesses and arguing the position of Manufacturers Hanover at the hearings.

On October 22, 1968, Manufacturers Hanover submitted its main brief (117 pages) to the Commission. This brief argued that Penn Central should be required to take the New Haven over immediately and set forth in detail the reasons why Penn Central should be required to pay considerably more for the assets of the New Haven. McAfee, Bader and McGraw all wrote substantial sections of this brief and spent considerable time revising various parts of the brief. After this brief was filed with the Commission on October 22, 1968, a reply brief (87 pages) to the arguments of other parties was filed, as required by Commission order, on October 29, 1968. Because of the lengthy arguments of Penn Central and other parties, this reply brief required a substantial effort in which McAfee, Bader and McGraw worked many nights in order to reply to the main arguments of other parties within the limited time allowed.

Proceedings Arising from the Requirement of Immediate Inclusion in the Commission's Remand Decision

On December 2, 1968, the Commission announced its decision dated November 25, 1968 (the "Remand Decision") by which Penn Central was ordered to acquire the New Haven no later than December 31, 1968, even if proceedings on the amount of consideration to be paid therefor were still in progress and the consideration to be paid under the Purchase Agreement was revised upwards. The Commission found that the New Haven's interest in the Grand Central Terminal Properties was worth approximately $28 million, that the New Haven was entitled to $14.6 million of the $16.2 million for real estate taxes which had been counted both as expenses of liquidation and as part of the consideration to be received from Penn Central, that the consideration to the New Haven should be increased to reflect the discounting of both receipts and expenses of liquidation and that the New Haven should receive additional amounts for its interest in the Boston & Providence Railroad. The Commission, however, introduced two new discounts--for abandonment delays and for an assumed bulk sale-- in the aggregate amount of approximately $22 million. Application of these discounts left a new liquidation value of $140.6 million to which an additional $5 million was added for loss sharing. Thus, the Remand Decision effected a substantial--but inadequate--increase in the amount to be received by the New Haven.

McAfee, Bader and McGraw carefully reviewed the Remand Decision and considered the position which Manufacturers

Hanover should take with respect to the decision. Pursuant to an order of the Reorganization Court, counsel for Manufacturers Hanover on December 16, 1968, filed a brief with that Court (91 pages) which argued that Penn Central should be required to take over the New Haven and that the consideration provided for in the Remand Decision should be increased substantially. McAfee, Bader and McGraw were compelled to work long hours to prepare this brief since the Court could allow but little time for the preparation of a brief in view of the need for prompt action. Formal objections to the Remand Decision were also filed on behalf of Manufacturers Hanover on December 16, 1968.

On December 20, 1968, McAfee, Bader and McGraw attended a hearing before the Reorganization Court on the take-over aspects of the Remand Decision. Bader argued that Penn Central should be required to take over the New Haven no later than December 31, 1968, as the Remand Decision had directed. The question of the adequacy of the consideration was deferred for further consideration. On December 23, 1968 Bader participated with other counsel, in connection with a further hearing before the Reorganization Court on the form of the order requiring Penn Central to take over the New Haven and at that conference the terms of the take-over order were hammered out.

On December 24, 1968, McAfee, Bader and McGraw attended a hearing before Judge Edward Weinfeld in the United States District Court for the Southern District of New York on an Order (obtained by Penn Central) to Show Cause why enforcement of the order of the Reorganization Court requiring

Penn Central to take over the New Haven by December 31, 1968 should not be enjoined. At this hearing the parties were given until December 27, 1968 to submit a brief in opposition to Penn Central's motion. Not knowing how quickly the Court would desire to decide Penn Central's motion, McAfee, Bader and McGraw had prepared a short memorandum in opposition to Penn Central's motion by December 24, 1968. In view of the time given the parties to oppose Penn Central, this memorandum was not submitted and was enlarged on December 26, 1968. On December 27, 1968, Manufacturers Hanover submitted a memorandum (30 pages) which set forth in detail why Penn Central's motion should be denied. The motion was denied and Penn Central acquired the New Haven at midnight, December 31, 1968.

Proceedings to Review the Adequacy of Consideration Provided for by the Commission's Remand Decision

Once the crisis of the continuation of the New Haven's operations had been resolved, Manufacturers Hanover, as well as other bondholder representatives, proceeded to obtain review of the amount of consideration provided for by the Remand Decision. (The Reorganization Court's order requiring Penn Central to take over the New Haven specifically provided that the price to be paid by Penn Central was left open.)

In late December 1968, McGraw drafted an Order to Show Cause for the convening of a three judge District Court. McAfee and Bader reviewed and revised this Order to Show Cause

with its supporting Affidavit. McGraw also spent substantial time drafting a new complaint for a new three judge District Court action. This took substantial time since it required a determination of the issues Manufacturers Hanover would raise and a formulation of the position Manufacturers Hanover would take with respect to such issues. McAfee and Bader spent considerable time reviewing and revising this complaint. The complaint was filed on December 31, 1968 and on that date McAfee appeared before Judge Edward Weinfeld in the United States District Court for the Southern District of New York in order to have Judge Weinfeld sign an Order to Show Cause for the convening of a three judge District Court. On January 3, 1969, a hearing, attended by McAfee, Bader and McGraw, on the convening of the three judge Court was held, and dates were set for the filing of briefs by all parties.

In February, 1969 Penn Central moved to consolidate its action for a stay of the Reorganization Court's inclusion order with the Three Judge District Court actions brought by bondholder representatives for a review of the Remand Decision. Counsel for Manufacturers Hanover prepared a memorandum in opposition to this motion, which was submitted jointly by all bondholder representatives. On February 18, 1969, McGraw appeared in the United States District Court for the Southern District of New York in order to have Penn Central's motion referred from the regular motion part to the Three Judge District Court.

McAfee, Bader and McGraw spent most of the spring of 1969 preparing briefs to the three judge District Court and to the Reorganization Court. By order of the Reorganization Court the briefs submitted to the Three Judge District Court were also submitted to the Reorganization Court.

Manufacturers Hanover's main brief to both courts was filed on January 17, 1969. This brief (107 pages) was a substantial revision of an earlier brief which had been submitted to Judge Anderson in December, 1968. McAfee, Bader and McGraw spent a great amount of time drafting and revising this brief. The brief contained the basic attack of Manufacturers Hanover on the valuation errors which Manufacturers Hanover maintained had been committed.

On February 19, 1969 Manufacturers Hanover submitted its answering brief (42 pages) to both courts. McAfee, Bader and McGraw had all drafted portions of this brief and had spent considerable time editing and revising portions of the brief. The brief replied to arguments advanced in the main brief of Penn Central and in the briefs of other parties. The principal attack upon the position of Manufacturers Hanover and of other bondholders was made by Penn Central and the Commission in the February, 1969 answering briefs. Accordingly, counsel for Manufacturers Hanover went to considerable lengths to reply to these arguments in its reply brief dated March 14, 1969. McAfee, Bader and McGraw spent substantial time reviewing the arguments made by Penn Central and the Commission, and in drafting and revising portions of the reply brief (109 pages).

McAfee, Bader and McGraw traveled to New Haven for oral argument on the briefs on March 31, and April 1 and 2, 1969. McGraw and Bader spent some time preparing for these arguments in advance and they, with McAfee, spent substantial time attending conferences with other bondholder representatives. At the argument before Judge Anderson, Bader argued for Manufacturers Hanover. Although the April 2, 1969 hearing (as opposed to those on March 31 and April 1) was devoted largely to Step Two of the Plan of Reorganization, some questions relating to the adequacy of consideration were argued on that day as well.

The argument before the three judge District Court was held on April 17, 1969. McAfee, Bader and McGraw all attended the argument, and Bader argued for Manufacturers Hanover.

Further Hearings before the Reorganization Court on Step Two of the Plan of Reorganization

The Reorganization Court, following the Remand Decision, directed that objections to all phases of the Remand Decision be filed on December 16, 1968, and subsequently directed that separate briefs be filed setting forth the parties' positions on Step Two of the Plan of Reorganization. Accordingly, the objections which Manufacturers Hanover filed on December 16, 1968 included objections to certain provisions of the Plan of Reorganization. On February 11, 1969, Manufacturers Hanover filed its main brief (29 pages) on Step Two of the Plan of Reorganization. This argued that the First and Refunding Mortgage of the New Haven should be paid in

full before anything was paid to the holders of the New Haven's General Income Mortgage, that the New Haven's First and Refunding Mortgage should receive stock of the holding company for principal and interest, that post-bankruptcy interest on pre-bankruptcy taxes was not entitled to priority and that certain modifications should be made in the plan. McGraw drafted most of this brief, and McAfee and Bader reviewed and revised the brief and the positions which were taken in it.

On March 11, 1969, Manufacturers Hanover filed a short reply brief (6 pages in length) to the positions of other parties on Step Two of the Plan of Reorganization. This brief was prepared by McAfee, Bader and McGraw working together.

The Decisions on the Fourth and Fifth Supplemental Reports

The Reorganization Court announced its decision on May 28, 1969, disallowing the two discounts developed in the Commission's remand decision and making further adjustments in the valuation aspects of the remand decision so as to increase the consideration required to be paid by $30 million and also recognized the merits of the bondholders' attack on the Commission's valuation of the Penn Central stock. As part of its decision, the Reorganization Court directed the Commission to recalculate certain discounts. Commission counsel rejected an offer by Bader to meet with him and representatives of other bondholder interests and of Penn Central in an effort to resolve this question and the Commission thereupon, by letter June 10, 1969, submitted

its own calculation of the discounts. Bader made a detailed mathematical analysis of the discount and of the underlying record and drafted a letter to the Reorganization Court, replying to the Commission's presentation. This letter, which was revised at a conference between Bader and counsel for the Bondholders Committee, was filed on June 17, 1969 and advocated a position with respect to the matter of the discount approximately $3 million greater than that suggested by the Commission. The bondholders position was subsequently adopted by the Reorganization Court. During the same period in June, McGraw and McAfee drafted proposed orders of the Reorganization Court based upon the decision of May 28, 1969, together with a memorandum in support thereof which was prepared in consultation by counsel for Manufacturers Hanover and for other bondholder interests.

On June 18, 1969, the Three-Judge Court filed its decision on review of the Commission's remand order, which, over a dissent by Judge Weinfeld, in substance affirmed the Commission's decision. Thus, there was a disagreement of approximately $28 million between the decision of the Reorganization Court and the decision of the Three-Judge Court.

The Reorganization Court held hearings on June 24, 1969 concerning the form of order to be entered and oral argument on the question of the amount of the discounts to be allowed. McAfee, Bader and McGraw participated jointly in the formulation of the argument of these points and Bader argued the discount question on behalf of Manufacturers Hanover.

On July 10, 1969, the Commission issued sua sponte its Fifth Supplemental Report and Order, adopting the minor modifications required by the Three-Judge Court decision of June 18, 1969 and incorporating its position on the discount question.

During the latter part of June and early July, 1969, McGraw and Bader researched the procedual questions as to the review of the conflict in decisions of the Reorganization Court and the Three-Judge Court, in view of the novel questions arising out of the fact that the order of the Three-Judge Court was reviewable on direct appeal to the Supreme Court while the order of the Reorganization Court was subject to appeal to the Second Circuit and review by the Supreme Court only by writ of certiorari. Consideration was also given to the procedure for bringing up the Fifth Supplemental Report and Order for review, since this was not part of the record before either the Reorganization Court or the Three-Judge Court.

On July 17, 18 and 21, 1969, McAfee worked with counsel for other bondholder interests on a memorandum to the Three-Judge Court on the form of its decree, which was filed on July 22, 1969, and on July 24, 25, 29 and 30 on a further memorandum to that Court dealing with the discount issue, which was filed under date of August 1, 1969,

On August 28, 1969, the Reorganization Court filed its decision on Step II of the Plan of Reorganization and also its final order on the Plan of Reorganization as set forth in the Commission's Fourth Supplemental Report.

Appeals to the Supreme Court with Respect to the Valuation Questions

Bader and McAfee participated through August in discussions among all parties as to the procedure to be followed on appeal. On or about August 26, 1969, Notices of Appeal were filed in the Second Circuit from the order of the Reorganization Court. (Various parties had also noticed appeals to the Second Circuit from the Reorganization Court's decision and order of August 10, 1968 and Penn Central had noticed an appeal from the Reorganization Court's order of December 24, 1968 directing immediate inclusion.) On September 11, 1969, the final decree of the Three-Judge Court was entered.

Commencing in late August, McAfee and Bader began work on the jurisdictional statement for the United States Supreme Court on appeal from the order of the Three-Judge Court and Bader continued research on the possibility of consolidating the appeals from the orders of the Reorganization Court and the Three-Judge Court. In September 1969, agreement was reached among counsel for all interested parties that all appeals from the Second Circuit should be consolidated. Bader and McAfee prepared a Notice of Motion and Affidavit to accomplish this end and an order in accordance with this agreement was entered on September 7, 1969 which incorporated the subsequent agreement that the consolidated appeals should be separated into appeals dealing with Step I issues and appeals dealing with Step II issues. On October 9, 1969, Manufacturers Hanover and other bondholder interests filed a

Notice of Appeal to the Supreme Court from the order of the Three-Judge Court.

In October, 1969, Selwyn Seidel, another associate of ST&B, resumed research on the procedure for consolidating the Step I phase of the appeals in the Second Circuit with the direct appeal from the order of the Three-Judge Court with a view to avoiding, if possible, the necessity of an actual separate hearing in the Second Circuit and thus expediting a final decision. In early October, McAfee, Bader and Seidel began drafting the petition for a writ of certiorari to the Second Circuit before judgment and also the jurisdictional statement on the direct appeal from the order of the Three-Judge Court. As in past major briefs, each attorney worked initially on separate sections of the petition and jurisdictional statement and then reviewed and revised material prepared by other attorneys. Whitney North Seymour, Sr., the Senior Partner of the firm, supervised the preparation of both the petition and the jurisdictional statement and reviewed the final drafts of both documents. This work continued on a very intensive basis through October and November, 1969. Counsel for Manufacturers Hanover also accepted responsibility for preparing and printing the Appendix of decisions, which totaled 469 pages. On November 17, 1969, Bader met with counsel for all the other parties and then with the clerk of the Supreme Court to agree on procedural matters. Manufacturers Hanover's jurisdictional statement (consisting of 41 printed pages) and its Petition for Certiorari (consisting of 25 printed pages) were filed on December 5, 1969.

During the time that the petition and jurisdictional statement were in preparation, counsel for Manufacturers Hanover were also preparing motions to extend the time of all parties to perfect appeals to the Second Circuit, a process which was repeated at intervals until the decision of the Supreme Court in June 1970. (While these motions were agreed to by all significant parties, counsel for Manufacturers Hanover undertook the responsibility of preparing the motions and obtaining prior agreement.)

Briefs to and Argument in the Supreme Court

In the latter part of December, 1969, conferences among counsel for the various parties to the appeals resulted in agreement on a shortened schedule for the filing of briefs and to advise the Supreme Court that all parties were in agreement that all appeals from both the Three-Judge Court and Reorganization Court ought to be heard together on their merits. The Supreme Court granted certiorari and noted jurisdiction by order dated February 2, 1970, which consolidated the appeals from the orders of the Reorganization Court and the Three-Judge Court.

Preliminary research on Manufacturers Hanover's main brief on the merits had actually commenced in mid-January 1970. Conferences were held among the various counsel for the bondholder interests and counsel for the Railroad Trustees to reach agreement on allocation of time and subject matter for oral argument and also on the general areas to be briefed to the Supreme Court; agreement was also sought -

and obtained - as to the general approach to be taken, so as to avoid conflicts in positions. While consideration was given to the filing of joint briefs or to a subdivision of the topics to be covered in the briefs on the merits, this was not feasible in view of the short briefing schedule allowed. The brief on the merits was drafted by Messrs. McAfee, Bader and Seidel and was reviewed by them and by Mr. Seymour through February 26, 1970. William Burck, an associate of this firm, assisted in the legal research and in the proofreading and citation checking of the final version of the brief on the merits (89 pages-printed) which was filed on February 27, 1970.

As with the appendix to the jurisdictional statement and petition, counsel for Manufacturers Hanover undertook the responsibility for collecting and printing the appendix of significant dates and excerpts from the record and for proofreading the same. This required consultations with counsel for other parties, in order to reach agreement on the content of the record and appendix, which consisted of some 521 printed pages and was also filed on February 27, 1970.

After the main briefs of all the bondholder interests and the Railroad Trustees were filed at the end of February 1970, Bader, McAfee and Seymour, after reviewing the various briefs of appellants (totaling approximately 342 printed pages), conferred with counsel for the other appellants to agree upon a division of topics and time for oral argument and Seymour commenced preparation for oral argument on the topics assigned to him, based upon analyses prepared by McAfee, Bader and Seidel.

The Solicitor General provided a proof of the United States answering brief on March 16, 1970 and the remaining answering briefs became available within the next few days. Upon receipt of the answering briefs, counsel for Manufacturers Hanover agreed with counsel for the Bondholders Committee to prepare a joint reply brief. McAfee, Bader, Seidel and Burck commenced preparing the reply brief on or about March 18 and this work continued on a daily basis, with counsel for the Bondholders Committee, through March 25, 1970 when the reply brief, consisting of 76 printed pages, was filed. Seymour participated in the preparation of the reply brief and reviewed the late drafts thereof, although his primary concentration during this period was on preparation for the argument, scheduled for March 30, 1970. After the filing of the reply brief, counsel for the appellants met several times both in New York and Washington to agree upon the order of presentation, allocation of time and topics for argument, and to prepare for the argument itself. Seymour, McAfee, Bader and Seidel participated in these conferences on behalf of Manufacturers Hanover. The argument was held on March 30, the court having set aside the entire day for the purpose. Seymour, on behalf of Manufacturers Hanover, opened for the appellants and argued primarily the impropriety of the two "discounts", one of $15,386,000 and another of $6,695,000, allowed in the Commission's Fourth Supplemental Report.

Shortly after the oral argument in the Supreme Court, Seidel and McAfee commenced work on drafting a letter to the bondholders to bring them up to date on the status

of the proceedings; this letter was printed and mailed under date of April 10, 1970.

In May 1970, the remaining Railroad Trustee, Richard Joyce Smith, requested the views of counsel for the bondholder interests on the potential cash problem of the New Haven estate in view of actual and anticipated reductions in the payment of dividends by Penn Central. McAfee attended a meeting with Mr. Smith and other counsel on May 18. Subsequently, a further conference was scheduled for June 29, 1970 on which date the Supreme Court announced its decision, affirming the decision of the Reorganization Court and overturning the order of the Three-Judge Court, but remanding for further consideration, in light of Penn Central's petition for reorganization, the value of the "stock" portion of the purchase price.

Proceedings Arising out of the Supreme Court's Decision and the Bankruptcy of Penn Central

McAfee and Bader reviewed the decision of the Supreme Court in preparation for the initial hearing before the Reorganization Court on July 14, 1970 on the petition of Trustee Smith to intervene in the Penn Central reorganization proceedings and for authority to withdraw monies from the Registry of the Court. McAfee and Bader also commenced preliminary work on the position to be taken by Manufacturers Hanover in the proceedings before the Reorganization Court on remand. In this connection, Rurck commenced research on the status of the New Haven claims in view of the bankruptcy of Penn Central. Henry Landau, another associate of ST&B and a specialist in bankruptcy matters, also participated in this research.

When the Reorganization Court noticed hearings on remand for August 25, 1970 and requested the position of the parties on various questions set forth in its order, McAfee, Bader and Burck continued to research the status of Manufacturers Hanover's claim and reviewed the statements of position of other parties as they were received. After consultation with other bondholder interests, it was decided that Manufacturers Hanover would support the statement of position filed by Trustee Smith. Bader and McAfee, after reviewing the "Gold Bond" mortgage of Central, prepared a response to the statement of position filed by Manufacturers Hanover, as trustee of the Central's Gold Bond mortgage. During this time, Bader was also attempting to establish the appellant's right to collect the costs allowed on the appeals to the Supreme Court from the United States Government and had conferences and exchanges of letters with the Solicitor General's office regarding the same.

In October 1970, McAfee, Bader and Burck commenced drafting a statement in response to the positions taken by the Interstate Commerce Commission and the Penn Central trustees, in preparation for the adjourned hearing before the Reorganization Court. The statement of position of Manufacturers Hanover was finally served and filed on November 9, 1970, and McAfee and Bader appeared at the hearing on November 18, 1970.

Burck continued research through December on a brief in support of the statements of position filed by Manufacturers Hanover and the memorandum was drafted and revised by McAfee, Bader and Burck during the latter part

of December, when it was filed. Commencing in January of 1971, McAfee, Bader and Burck commenced work on a reply brief dealing particularly with the briefs filed by the Penn Central trustees and the I.C.C.

The reply brief (15 page) was completed on January 26, 1971 and filed on January 27, 1971. McAfee, Bader and Burck attended the hearing before the Reorganization Court on February 9, 1971 and Bader argued briefly in support of the position of Manufacturers Hanover.

In March, 1971, Burck drafted a proof of claim against Penn Central for the balance due on the costs on appeal allowed by the Supreme Court.